**Purchasing Office**
191 South East St
Frederick, Maryland 21701
301-644-5116 phone
301-644-5213 fax

Frederick County Public Schools
Reach. Challenge. Prepare.

Kerrie Koopman CPPB, CPPO,
Purchasing Manager
Kim Miskell, CSBO, Assistant Purchasing Manager
**Bill Meekins CPPB, CPPO, CSBO, CPCP, Purchasing Agent**
Shane Ryberg, Purchasing Agent

| | |
|---|---|
| BID NUMBER/BID NAME: | 20C10, Multi-Classroom Portable Unit for Oakdale Elementary School |
| BID ISSUE DATE: | March 4, 2020 |
| BID CONTRACT MANAGER: | Bill Meekins CPPB, CPPO, CSBO, CPCP, Purchasing Agent<br>billy.meekins@fcps.org |
| BID CONTRACT ADMINISTRATOR: | Tony Ray, Project Manager III, Construction Management, tony.ray@fcps.org |
| QUESTIONS: | Questions due no later than 4:00 P.M., local time, on April 3, 2020. Submit questions in writing to the Contract Manager listed above with a copy to the Contract Administrator. |
| PRE-BID DATE: | 10:00 A.M., local time, on March 19, 2020<br>(Attendance is encouraged, but not mandatory.) |
| PRE-BID LOCATION: | Oakdale Elementary School<br>5830 Oakdale School Road<br>Ijamsville, MD 21754 |
| OBTAINING BID DOCUMENTS: | To view and/or download this solicitation package please visit our webpage at: www.fcps.org/bidlist. If you have problems downloading this bid or applicable addenda, contact: amy.beall@fcps.org |
| BONDS REQUIRED: | YES |
| MBE REQUIREMENTS: | NO |
| BID DUE: | 2:00 P.M., local time, on April 15, 2020<br>Faxed or emailed bids are not acceptable. |
| SEALED BID DELIVERED TO: | Frederick County Public Schools<br>Attn: Purchasing Department<br>191 South East Street<br>Frederick, MD 21701<br><br>(Parking is available at Deck #5 on All Saints Street. Recent security upgrades at the FCPS Central Office Building will require visitors to request entry utilizing the phone buzzer/button system. Please allow enough time to ensure access to the building prior to the bid due time.)<br><br>Bid proposal must be properly marked with vendor's business name, address, bid name and number on the envelope or package. Do not return the following pages: cover page, table of contents, map, calendar, directory or terms and conditions. |
| TENTATIVE AWARD DATE: | BOE Work Session, scheduled on: May 13, 2020 |
| ELIGIBILITY TO BID: | All Frederick County Public School vendors and or contractors interested in bidding on FCPS projects must register at eMaryland Marketplace Advantage www.procurement.maryland.gov. FCPS will no longer accept bidder's applications. |

**FREDERICK COUNTY PUBLIC SCHOOLS**
**BID 20C10**
**MULTI-CLASSROOM PORTABLE UNIT FOR OAKDALE ELEMENTARY SCHOOL**

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**Purchasing Office**
191 South East Street
Frederick, Maryland 21701
301-644-5209 phone
301-644-5213 fax

Frederick County Public Schools
Reach. Challenge. Prepare.

Kerrie Koopman CPPB, CPPO,
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**Bill Meekins CPPB, CPPO, CSBO, CPCP,**
**Purchasing Agent**
Shane Ryberg, Purchasing Agent

INVITATION TO BID

March 4, 2020

Bid 20C10, Multi-Classroom Portable Unit for Oakdale Elementary School

The Board of Education of Frederick County will receive bids for Bid 20C10, Multi-Classroom Portable Unit for Oakdale Elementary School. Bids will be received and time stamped in the main lobby of Frederick County Public Schools (FCPS) at 191 South East Street, Frederick, MD 21701, prior to and no later than 2:00 p.m., local time, on April 15, 2020. Bids received after this time will be returned unopened. Vendors will be escorted to Conference Room 2B, at which time and place bids will be publicly opened and read aloud.

A pre-bid meeting will be held at 10:00 a.m., local time, on March 19, 2020 at Oakdale Elementary School, 5830 Oakdale School Road, Ijamsville, MD 21754. Attendance at the pre-bid meeting is not mandatory; however, vendors are strongly encouraged to attend.

To view and/or download this solicitation package please visit our webpage at: http://www.fcps.org/bidlist.

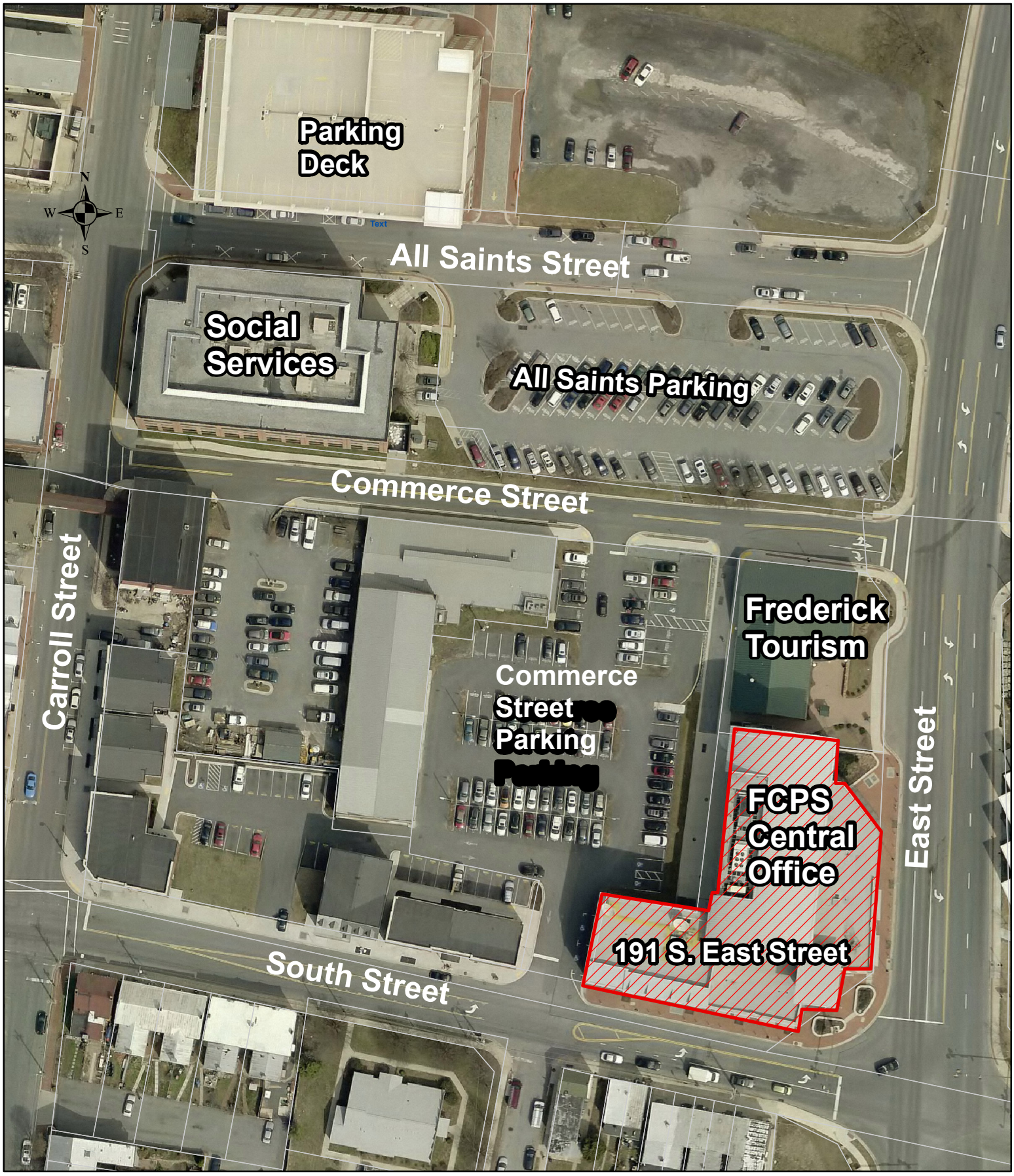
All FCPS vendors and or contractors interested in bidding on FCPS projects must register at www.emarylandmarketplace.com, prior to contract award. FCPS will no longer accept bidder's applications.

FCPS System does not discriminate in admissions, access, treatment, or employment in its programs or activities on the basis of race, color, gender, age, national origin, religion, or disability. For more information, contact the Executive Director of Legal Services at 301-696-6851.

The Board of Education of Frederick County, Maryland, reserves the right to reject any and all bids and to waive any informalities or irregularities in bidding.

By order of the Board of Education of Frederick County, Maryland.

Purchasing Agent: Bill Meekins CPPB, CPPO, CSBO, CPCP




# Frederick County Public Schools
# 191 S. East Street

**Frederick County Public Schools, MD, School Year 2019-2020 Calendar**

**August 2019**
23, 26-30 Fri, Mon-Fri Teacher Work Days

**September 2019**
02 Mon FCPS Closed: Labor Day
03 Tue First Day of School for Students
20 Fri Schools Closed: Fair Day

**October 2019**
08 Tue 2-Hour Early Dismissal for Students: Teacher Mid-Term Work Session
09 Wed Schools Closed. Yom Kippur.
23 Wed Elementary and Middle Schools Open 4 Hours Late for Evening Parent-Teacher Conferences; High Schools Are Full Day
24 Thu Elementary and Middle Schools Open 4 Hours Late for Evening Parent-Teacher Conferences; High Schools Are Full Day
25 Fri Elementary and Middle Students Dismissed 3.5 Hours Early for Afternoon Parent-Teacher Conferences; High Schools Are Full Day

**November 2019**
07 Thu End of Term 1
08 Fri Schools Closed for Students: Teacher Work Day
11 Mon Term 2 Begins
27, 28*, 29* Wed-Fri Schools Closed: Thanksgiving Break

**December 2019**
20 Fri 2-Hour Early Dismissal for Students: Teacher Mid-Term Work Session
23, 24*-31* Mon-Tue Schools Closed: Winter Break

**January 2020**
01* Wed Schools Closed: New Year's Day
20* Mon Schools Closed: Dr. Martin Luther King Jr. Day
28 Tue End of Term 2
29 Wed Schools Closed for Students: Teacher Work Day
30 Thu Second Semester and Term 3 Begin

**February 2020**
14 Fri 2-Hour Early Dismissal for Students: Teacher Work Session
17* Mon Schools Closed: Presidents' Day

**March 2020**
04 Wed 2-Hour Early Dismissal for Students: Teacher Mid-Term Work Session

**April 2020**
08 Wed 2-Hour Early Dismissal for Students: Teacher Work Session; End of Term 3
09 Thu Schools Closed for Students: Teacher Work Day
10*, 13* Fri-Mon Schools Closed: Spring Break
14 Tue Term 4 Begins
28* Tue Schools Closed: Primary Election Day

**May 2020**
25* Mon Schools Closed: Memorial Day

**June 2020**
22**Mon Last Day of School for Students /2-Hour Early Dismissal: Teacher Work Session. End of Term 4
23** Tue Last Day of School for Teachers

*State-Mandated Public Schools Holiday

**This calendar includes 8 days for snow or other emergency closings. If there are no days needed for emergency closings, the last day for students will be June 10. Subject to BOE revision, FCPS will make up emergency-closing days in the following sequence: June 11, 12, 15, 16, 17, 18, 19 and 22. The June two-hour early dismissal will occur on the last day of school for students.

# DIRECTORY OF SCHOOLS

## ELEMENTARY

1. **Ballenger Creek** ◗ 240-236-2500
   Ms. Kristen Canning, Principal
   5250 Kingsbrook Drive
   Frederick, MD 21703
   Fax 240-236-2501

2. **Brunswick** ◗◆ 240-236-2900
   Mr. Justin McConnaughey, Principal
   400 Central Avenue
   Brunswick, MD 21716
   Fax 240-236-2901

3. **Butterfly Ridge** ◗●◆★ 240-566-0300
   Dr. Patricia Hosfelt, Principal
   601 Contender Way
   Frederick, MD 21703
   Fax 240-566-0301

4. **Carroll Manor** ◗◆ 240-236-3800
   Ms. Kimberly Robertson, Principal
   5624 Adamstown Road
   Adamstown, MD 21710
   Fax 240-236-3801

5. **Centerville** 240-566-0100
   Ms. Karen Hopson, Principal
   3601 Carriage Hill Drive
   Frederick, MD 21704
   Fax 240-566-0101

6. **Deer Crossing** 240-236-5900
   Ms. Amy Routzahn, Principal
   10601 Finn Drive
   New Market, MD 21774
   Fax 240-236-5901

7. **Emmitsburg** ● 240-236-1750
   Ms. Mary Ann Wiles, Principal
   300 South Seton Avenue
   Emmitsburg, MD 21727
   Fax 240-236-1751

8. **Glade** ◗◆ 240-236-2100
   Mr. Lorcán ÓhEithir, Principal
   9525 Glade Road
   Walkersville, MD 21793
   Fax 240-236-2101

9. **Green Valley** 240-236-3400
   Dr. Giuseppe Di Monte, Principal
   11501 Fingerboard Road
   Monrovia, MD 21770
   Fax 240-236-3401

10. **Hillcrest** ◗●◆★ 240-236-3200
    Mr. Karl Williams, Principal
    1285 Hillcrest Drive
    Frederick, MD 21703
    Fax 240-236-3201

11. **Kemptown** 240-236-3500
    Ms. Kathryn Golightly, Principal
    3456 Kemptown Church Road
    Monrovia, MD 21770
    Fax 240-236-3501

12. **Lewistown** ◆ 240-236-3750
    Ms. Dana Austin, Principal
    11119 Hessong Bridge Road
    Thurmont, MD 21788
    Fax 240-236-3751

13. **Liberty** 240-236-1800
    Ms. Jana Strohmeyer, Principal
    11820 Liberty Road
    Frederick, MD 21701
    Fax 240-236-1801

14. **Lincoln** ◗●◆★ 240-236-2650
    Mr. Eric Rhodes, Principal
    200 Madison Street
    Frederick, MD 21701
    Fax 240-236-2651

15. **Middletown** 240-236-1100
    Grades 3-5
    Ms. Jan Hollenbeck, Principal
    201 East Green Street
    Middletown, MD 21769
    Fax 240-236-1150

16. **Middletown Primary** ◗◆ 240-566-0200
    Grades Pre-K–2
    Ms. Sandra Fox, Principal
    403 Franklin Street
    Middletown, MD 21769
    Fax 240-566-0201

17. **Monocacy** ◗●★ 240-236-1400
    Mr. Troy Barnes, Principal
    7421 Hayward Road
    Frederick, MD 21702
    Fax 240-236-1401

18. **Myersville** 240-236-1900
    Ms. Kathy Swire, Principal
    429 Main Street
    Myersville, MD 21773
    Fax 240-236-1901

19. **New Market** ◗ 240-236-1300
    Mr. Jason Bowser, Principal
    93 West Main Street
    New Market, MD 21774
    Fax 240-236-1301

20. **New Midway-Woodsboro**
    Ms. Kimberly Clifford, Principal
    **A) New Midway** 240-236-1500
    Grades 3-5
    12226 Woodsboro Pike
    Keymar, MD 21757
    Fax 240-236-1501
    **B) Woodsboro** ◗ 240-236-3700
    Grades Pre-K–2
    101 Liberty Road
    Woodsboro, MD 21798
    Fax 240-236-3701

21. **North Frederick** ◗●◆★ 240-236-2000
    Ms. Kimberly Seiss, Principal
    1010 Fairview Avenue
    Frederick, MD 21701
    Fax 240-236-2001

22. **Oakdale** 240-236-3300
    Ms. Leigh Warren, Principal
    5830 Oakdale School Road
    Ijamsville, MD 21754
    Fax 240-236-3301

23. **Orchard Grove** ◗◆ 240-236-2400
    Mr. Jay Corrigan, Principal
    5898 Hannover Drive
    Frederick, MD 21703
    Fax 240-236-2401

24. **Parkway** 240-236-2600
    Ms. Stephanie Brown, Principal
    300 Carroll Parkway
    Frederick, MD 21701
    Fax 240-236-2601

25. **Sabillasville** 240-236-6000
    Ms. Kate Krietz, Principal
    16210-B Sabillasville Road
    Sabillasville, MD 21780
    Fax 240-236-6001

26. **Spring Ridge** ◗◆ 240-236-1600
    Ms. DeVeda Coley, Principal
    9051 Ridgefield Drive
    Frederick, MD 21701
    Fax 240-236-1601

27. **Thurmont** 240-236-0900
    Grades 3-5
    Ms. Debra O'Donnell, Principal
    805 East Main Street
    Thurmont, MD 21788
    Fax 240-236-0901

28. **Thurmont Primary** ◗ 240-236-2800
    Grades Pre-K–2
    Dr. Michele Baisey, Principal
    7989 Rocky Ridge Road
    Thurmont, MD 21788
    Fax 240-236-2801

29. **Tuscarora** ● 240-566-0000
    Dr. Kimberly Mazaleski, Principal
    6321 Lambert Drive
    Frederick, MD 21703
    Fax 240-566-0001

30. **Twin Ridge** ◆ 240-236-2300
    Ms. Heather Hobbs Michael, Principal
    1106 Leafy Hollow Circle
    Mt. Airy, MD 21771
    Fax 240-236-2301

31. **Urbana at Sugarloaf** ◆ 240-566-0500
    Ms. Tess Blumenthal, Principal
    3400 Stone Barn Drive
    Frederick, MD 21704
    Fax 240-566-0501

32. **Valley** ◗ 240-236-3000
    Ms. Tracy Poquette, Principal
    3519 Jefferson Pike
    Jefferson, MD 21755
    Fax 240-236-3001

33. **Walkersville** ◗ 240-236-1000
    Ms. Christina McKeever, Principal
    83 West Frederick Street
    Walkersville, MD 21793
    Fax 240-236-1050

34. **Waverley** ◗●◆★ 240-236-3900
    Dr. Allie Watkins, Principal
    201 Waverley Drive
    Frederick, MD 21702
    Fax 240-236-3901

35. **Whittier** ◗◆ 240-236-3100
    Ms. Amy Schwiegerath, Principal
    2400 Whittier Drive
    Frederick, MD 21702
    Fax 240-236-3101

36. **Wolfsville** 240-236-2250
    Ms. Megan Stein, Principal
    12520 Wolfsville Road
    Myersville, MD 21773
    Fax 240-236-2251

37. **Yellow Springs** 240-236-1700
    Ms. Sue Gullo, Principal
    8717 Yellow Springs Road
    Frederick, MD 21702
    Fax 240-236-1701

## MIDDLE

38. **Ballenger Creek** 240-236-5700
    Mr. Jay Schill, Principal
    5525 Ballenger Creek Pike
    Frederick, MD 21703
    Fax 240-236-5701

39. **Brunswick** 240-236-5400
    Mr. Everett Warren, Principal
    301 Cummings Drive
    Brunswick, MD 21716
    Fax 240-236-5401

## HIGH

51. **Brunswick** 240-236-8600
    Mr. Michael Dillman, Principal
    101 Cummings Drive
    Brunswick, MD 21716
    Fax 240-236-8601

52. **Catoctin** 240-236-8100
    Ms. Jennifer Clements, Principal
    14745 Sabillasville Road
    Thurmont, MD 21788
    Fax 240-236-8101

53. **Frederick** 240-236-7000
    Dr. David Franceschina, Principal
    650 Carroll Parkway
    Frederick, MD 21701
    Fax 240-236-7015

54. **Governor Thomas Johnson** 240-236-8200
    Dr. Dan Lippy, Principal
    1501 North Market Street
    Frederick, MD 21701
    Fax 240-236-8201

55. **Linganore** 240-566-9700
    Ms. Nancy Doll, Principal
    12013 Old Annapolis Road
    Frederick, MD 21701
    Fax 240-566-9701

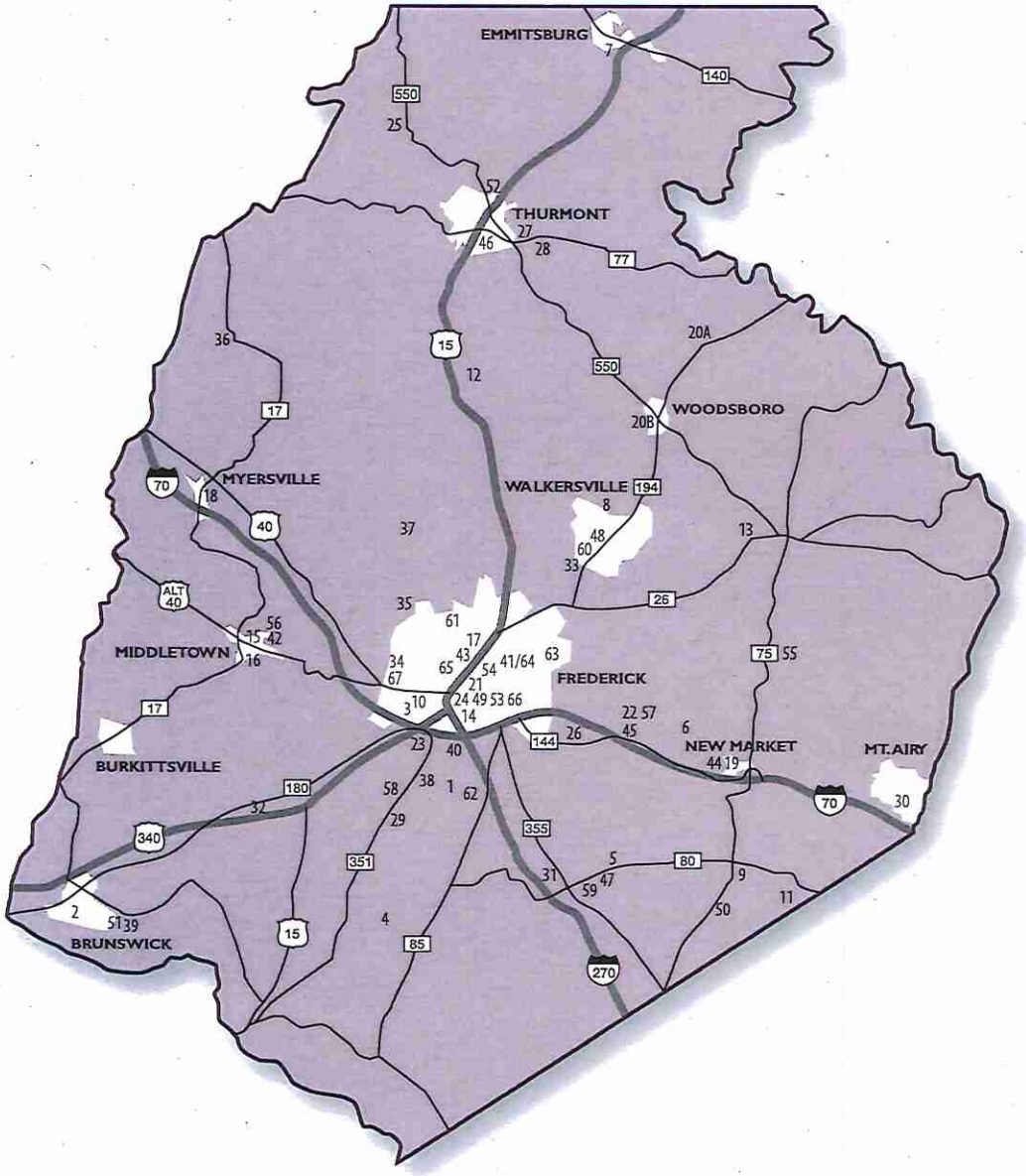
56. **Middletown** 240-236-7400
    Mr. Bernard Quesada, Principal
    200 Schoolhouse Drive
    Middletown, MD 21769
    Fax 240-236-7450

57. **Oakdale** 240-566-9400
    Ms. Lisa Smith, Principal
    5850 Eaglehead Drive
    Ijamsville, MD 21754
    Fax 240-566-9401

58. **Tuscarora** 240-236-6400
    Mr. Christopher Berry, Principal
    5312 Ballenger Creek Pike
    Frederick, MD 21703
    Fax 240-236-6401

59. **Urbana** 240-236-7600
    Mr. David Kehne, Principal
    3471 Campus Drive
    Ijamsville, MD 21754
    Fax 240-236-7601

60. **Walkersville** 240-236-7200
    Ms. Tracey K. Kibler, Principal
    81 West Frederick Street
    Walkersville, MD 21793
    Fax 240-236-7250




## KEY

- ◗ Half-day pre-kindergarten program available
- ● Full-day pre-kindergarten program available
- ◆ Special education pre-kindergarten available
- ★ STAR (Title I) Schools

FINDOUTFIRST EMAIL AND TEXTING: WWW.FCPS.ORG/FOF

**Middle (continued)**

40. **Crestwood** 240-566-9000
Mr. Neal Case, Principal
7100 Foxcroft Drive
Frederick, MD 21703
Fax 240-566-9001

41. **Governor Thomas Johnson** 240-236-4900
Ms. Maggie Gilgallon, Principal
1799 Schifferstadt Boulevard
Frederick, MD 21701
Fax 240-236-4901

42. **Middletown** 240-236-4200
Mr. Paul Fer, Principal
100 Martha Mason Street
Middletown, MD 21769
Fax 240-236-4250

43. **Monocacy** 240-236-4700
Dr. Stephanie Ware, Principal
8009 Opossumtown Pike
Frederick, MD 21702
Fax 240-236-4701

44. **New Market** 240-236-4600
Ms. T.C. Suter, Principal
125 West Main Street
New Market, MD 21774
Fax 240-236-4650

45. **Oakdale** 240-236-5500
Ms. Mita Badshah, Principal
5810 Oakdale School Road
Ijamsville, MD 21754
Fax 240-236-5501

46. **Thurmont** 240-236-5100
Mr. Daniel Enck, Principal
408 East Main Street
Thurmont, MD 21788
Fax 240-236-5101

47. **Urbana** 240-566-9200
Ms. Stacey Hiltner, Principal
3511 Pontius Court
Ijamsville, MD 21754
Fax 240-566-9201

48. **Walkersville** 240-236-4400
Mr. Frank Vetter, Principal
55 West Frederick Street
Walkersville, MD 21793
Fax 240-236-4401

49. **West Frederick** 240-236-4000
Ms. Pattie Barnes, Principal
515 West Patrick Street
Frederick, MD 21701
Fax 240-236-4050

50. **Windsor Knolls** 240-236-5000
Mr. Brian Vasquenza, Principal
11150 Windsor Road
Ijamsville, MD 21754
Fax 240-236-5001

## OTHER

61. **Career and Technology Center** 240-236-8500
Mr. Michael Concepcion, Principal
7922 Opossumtown Pike
Frederick, MD 21702
Fax 240-236-8501

62. **Carroll Creek Montessori Public Charter School** * 240-566-0600
Ms. Marilyn Horan, Principal
7215 Corporate Court
Frederick, MD 21703
Fax 240-566-0601

63. **Frederick Classical Charter School** 240-236-1200
Dr. Camille S. Bell, Principal
8445 Spires Way, Suite CC
Frederick, MD 21701
Fax 240-236-1201

64. **Frederick County Virtual School (includes Flexible Evening High School)** 240-236-8450
Dr. Stacey Adamiak, Principal
c/o GTJMS
1799 Schifferstadt Boulevard
Room 116
Frederick, MD 21701
Fax 240-236-8451

65. **Heather Ridge** 240-236-8000
Ms. Elizabeth Stiffler, Principal
1445 Taney Avenue
Frederick, MD 21702
Fax 240-236-8001

66. **Monocacy Valley Montessori Public Charter School** * 240-236-6100
TBD, Principal
217 Dill Avenue
Frederick, MD 21701
Fax 240-236-6101

67. **Rock Creek School** 240-236-8700
Ms. Katie Buckley, Principal
191 Waverley Drive
Frederick, MD 21702
Fax 240-236-8701

***For other useful numbers, see next page***

# AIA® Document A701™ – 1997

## *Instructions to Bidders*

**for the following PROJECT:**
*(Name and location or address):*
New Multi-Classroom Portable Unit
Oakdale Elementary School
5830 Oakdale School Road
Ijamsville, Maryland 21754
Bid 20C10

**THE OWNER:**
*(Name and address):*
The Board of Education of Frederick County
191 South East Street
Frederick, Maryland 21701-5918

**THE ARCHITECT:**
*(Name and address):*
N/A

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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3 BIDDING DOCUMENTS

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5 CONSIDERATION OF BIDS

6 POST-BID INFORMATION

7 PERFORMANCE BOND AND PAYMENT BOND

8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR



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**User Notes:** (1431988301)

## ARTICLE 1 DEFINITIONS

**§ 1.1** Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

**§ 1.2** Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, or in other Contract Documents are applicable to the Bidding Documents.

**§ 1.3** Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

**§ 1.4** A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

**§ 1.5** The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

**§ 1.6** An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

**§ 1.7** A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

**§ 1.8** A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

**§ 1.9** A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

## ARTICLE 2 BIDDER'S REPRESENTATIONS

**§ 2.1** The Bidder by making a Bid represents that:

**§ 2.1.1** The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.

**§ 2.1.2** The Bid is made in compliance with the Bidding Documents.

**§ 2.1.3** The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.

**§ 2.1.4** The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

## ARTICLE 3 BIDDING DOCUMENTS

### § 3.1 COPIES

**§ 3.1.1** Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid.

**§ 3.1.2** Bidding Documents will not be issued directly to Sub-bidders in complete bid sets only.

**§ 3.1.3** Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

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**§ 3.1.4** The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

**§ 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS**

**§ 3.2.1** The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect errors, inconsistencies or ambiguities discovered.

**§ 3.2.2** Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

**§ 3.2.3** Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

**§ 3.3 SUBSTITUTIONS**

**§ 3.3.1** The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

**§ 3.3.2** No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

**§ 3.3.3** If the Architect approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

**§ 3.3.4** No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

**§ 3.4 ADDENDA**

**§ 3.4.1** Addenda will be available to all who are known by the issuing office to have received a complete set of Bidding Documents at no charge, unless the addenda is informational and does not affect in any way the fit, form or function of any technical and design of this project. In that case, the potential contractor will be responsible for any printing costs.

**§ 3.4.2** Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

**§ 3.4.3** Addenda will be issued no later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

**§ 3.4.4** Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

**ARTICLE 4 BIDDING PROCEDURES**

**§ 4.1 PREPARATION OF BIDS**

**§ 4.1.1** Bids shall be submitted on the forms included with the Bidding Documents.

**§ 4.1.2** All blanks on the bid form shall be legibly executed in a non-erasable medium.

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**§ 4.1.3** Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

**§ 4.1.4** Interlineations, alterations and erasures must be initialed by the signer of the Bid.

**§ 4.1.5** All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."

**§ 4.1.6** Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.

**§ 4.1.7** Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

**§ 4.2 BID SECURITY**

**§ 4.2.1** Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Section 6.2.

**§ 4.2.2** If a surety bond is required, it shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.

**§ 4.2.3** The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

**§ 4.3 SUBMISSION OF BIDS**

**§ 4.3.1** All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

**§ 4.3.2** Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

**§ 4.3.3** The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

**§ 4.3.4** Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

**§ 4.4 MODIFICATION OR WITHDRAWAL OF BID**

**§ 4.4.1** A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

**§ 4.4.2** Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and

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time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

**§ 4.4.3** Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

**§ 4.4.4** Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

## ARTICLE 5 CONSIDERATION OF BIDS

### § 5.1 OPENING OF BIDS

At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders.

### § 5.2 REJECTION OF BIDS

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

### § 5.3 ACCEPTANCE OF BID (AWARD)

**§ 5.3.1** It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

**§ 5.3.2** The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

## ARTICLE 6 POST-BID INFORMATION

### § 6.1 CONTRACTOR'S QUALIFICATION STATEMENT

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

### § 6.2 OWNER'S FINANCIAL CAPABILITY

The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

### § 6.3 SUBMITTALS

**§ 6.3.1** The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Architect in writing:

**.1** a designation of the Work to be performed with the Bidder's own forces;

**.2** names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and

**.3** names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

**§ 6.3.2** The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

**§ 6.3.3** Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or

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Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

**§ 6.3.4** Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

## ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

### § 7.1 BOND REQUIREMENTS

**§ 7.1.1** If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

**§ 7.1.2** If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

**§ 7.1.3** If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

### § 7.2 TIME OF DELIVERY AND FORM OF BONDS

**§ 7.2.1** The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

**§ 7.2.2** Unless otherwise provided, the bonds shall be written on COMAR Document 21.07.02.10, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

**§ 7.2.3** The bonds shall be dated on or after the date of the Contract.

**§ 7.2.4** The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

## ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A101, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment Is a Stipulated Sum.

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# *Additions and Deletions Report for*
## *AIA® Document A701™ – 1997*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:05:06 ET on 02/12/2020.

**PAGE 1**

*(Name and location or ~~address)~~address):*
New Multi-Classroom Portable Unit
Oakdale Elementary School
5830 Oakdale School Road
Ijamsville, Maryland 21754
Bid 20C10

...

*~~(Name, legal status and address)~~(Name and address):*
The Board of Education of Frederick County
191 South East Street
Frederick, Maryland 21701-5918

...

*~~(Name, legal status and address)~~(Name and address):*
N/A

...

**~~TABLE OF ARTICLES~~TABLE OF ARTICLES**
**PAGE 2**

**§ 3.1.1** Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to ~~Bid in the number and for the deposit sum, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded.~~Bid.

**§ 3.1.2** Bidding Documents will not be issued directly to Sub-bidders ~~unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders.~~in complete bid sets only.
**PAGE 3**

**§ 3.4.1** Addenda will be ~~transmitted~~ available to all who are known by the issuing office to have received a complete set of Bidding ~~Documents.~~Documents at no charge, unless the addenda is informational and does not affect in any way the fit, form or function of any technical and design of this project. In that case, the potential contractor will be responsible for any printing costs.
**PAGE 6**

**§ 7.2.2** Unless otherwise provided, the bonds shall be written on ~~AIA Document A312,~~ COMAR Document 21.07.02.10, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:05:06 ET on 02/12/2020 under Order No. 4323301581 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A701™ – 1997, Instructions to Bidders, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

*(Signed)*

_____

*(Title)*

_____

*(Dated)*

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**BID 20C10, MULTI-CLASSROOM PORTABLE UNIT FOR OAKDALE ELEMENTARY SCHOOL**
**FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)**
**SUPPLEMENTAL INSTRUCTIONS TO AIA DOCUMENT A701**

## 1. BIDDER REGISTRATION

All Frederick County Public School vendors and or contractors interested in bidding on FCPS projects must register with eMaryland Marketplace Advantage www.procurement.maryland.gov. FCPS will no longer accept bidder's applications.

## 2. PRE-BID MEETING

a. A Pre-Bid Meeting will be held at the date and time indicated on the cover page of this solicitation package.

b. Attendance at the Pre-Bid Meeting is not mandatory; however, all vendors are strongly encouraged to attend.

c. The agenda for this Pre-Bid Meeting will include the following: introduction of staff; description of scope of work; timeline/scheduling; budget priorities/concerns; and procurement responsibilities.

d. Questions shall be submitted, via email, to the person(s) indicated on the cover page of this solicitation package. Due to possible changes and/or additions to the specifications, bids should not be submitted prior to the Pre-Bid meeting. Questions received after said date will not be considered. Neither the Owner nor its employees, agents nor representative shall be responsible for oral instructions.

e. If FCPS offices are closed, or operating on a modified schedule, due to inclement weather on the day a Pre-Bid is scheduled, the Pre-Bid is cancelled and will not be rescheduled unless an addendum is issued. Bidders are advised that they are to email questions to the identified Contract Manager by the date and time required within this solicitation. For the fastest, most reliable information, regarding closures and/or delays check the following:

- www.fcps.org
- Social Media: FCPS on Twitter and FCPS on Facebook
- Email/Text Messages: Sign up for FindOutFirst email and emergency-only text messages
- FCPS TV: Comcast Channel 18 (Frederick area)
- Local radio and tv stations

## 3. RECEIPT OF BIDS

a. Bids received prior to the time of opening will be time stamped and securely kept unopened. No bid received thereafter will be considered. FCPS will not be responsible for the premature opening of bids received that are not properly addressed or identified. Any bid may be withdrawn before the scheduled time for opening bids.

b. All inner and outer envelopes and packaging, used by Fed Ex, UPS and etc., are to be labeled with the following:

- Bidder Name
- Bid Number and Name
- Due Date and Time

c. Bids received after the designated date and/or time will not be accepted, regardless of when they were mailed or given to a delivery carrier.

d. Bids not received by the date, time, and location designated on the solicitation cover sheet, due to improper labeling, may be considered non-responsive.

e. In the event of inclement weather on the date when bids are scheduled to be opened and the FCPS offices are closed, or operating under a modified schedule, bids will be opened on the next business day at the same time as previously scheduled. Bids will be accepted until the scheduled time of opening on the next business day. (Often when schools are closed due to inclement weather, administrative offices remain open. When in doubt, call the Purchasing Department.)

## 4. ADDENDA

a. All changes to the bid solicitation will be made through appropriate addenda issued from the Purchasing Department.

b. Addenda will be available on the FCPS Purchasing Department webpage. All vendors who are known by the Purchasing Department to have downloaded the bid documents will receive an email notification.

c. Addenda will be issued a minimum of four (4) days prior to the bid opening date, unless the addenda issued extends the due date.

d. Each bidder shall ascertain, prior to submitting a bid that they have received all Addenda issued and the bidder shall acknowledge receipt on the Signature Acknowledgement Form. Failure of any bidder to acknowledge the receipt of addenda will not relieve that bidder from any obligations under this solicitation as amended by addenda. All addenda so issued will become a part of the award and contract documents.

## 5. PREPARATION OF BID

a. The attention of all contractors, subcontractors and material supply bidders is directed to the Invitation to Bid, Proposal Form(s), AIA documents A701, A101 and A201, and Supplemental Instructions to Bidders to AIA A701 for information pertinent to the bidding process.

b. Should any bidder be in doubt as to the meaning of the specifications, or should they find any discrepancy or omission, they shall notify the Contract Manager listed on the solicitation cover sheet. If required, bidders will be notified of clarifications and/or additional information by means of addenda.

c. Bidder must submit one (1) original proposal, with original signatures, unless otherwise specified. Bids must be prepared on the proposal form(s) provided.

d. Each bid will be sealed, show the full business address and contact information of the bidder and be signed by the person(s) legally authorized to sign contracts. All correspondence concerning the bid and contract, including notice of award, copy of contract, and purchase order, will be emailed, or mailed, to the address shown on the bid in the absence of written instructions from the bidder to the contrary.

e. The following items must be included in submission (if applicable):

i. Proposal pages completely and accurately filled out.
ii. Minority Business Enterprise Attachment “A” Form completed and signed.
iii. Minority Business Enterprise Attachment “B” Form completed and signed.
iv. Statutory Affidavit and Non-Collusion Certification form completed and signed.
v. Certificate of Compliance form completed and signed.

vi. Vendor Conflict of Interest Disclosure form completed and signed.
vii. AIA A310 Bid Bond (for 5% of the total bid amount).

f. Bidders shall be required under Article 56, Section 270(4), Annotated Code of Maryland, to provide proof of Certificate of Registry and must be licensed to do business in the State of Maryland and must provide a tax certification number. Visit the following website to ensure compliance: www.Egov.maryland.gov/BusinessExpress

g. Bids by partnerships must be signed with the partnership name, followed by the signature and designation of the person having authority to sign. When requested, satisfactory evidence of authority of the person signing will be furnished. Anyone signing the bid as an agent shall file satisfactory evidence of their authority to do so, if requested.

h. Bids by corporations must be signed with the name of the corporation, followed by the signature and designation of the person having authority to sign. When requested, satisfactory evidence of authority of the person signing will be furnished. Anyone signing the bid as an agent shall file satisfactory evidence of their authority to do so, if requested.

i. Failure to sign the bid document will result in rejection of the bid as non-responsive.

j. FCPS will not be responsible for any costs incurred by a bidder in preparing and submitting a proposal in response to this solicitation.

k. FCPS will accept all bid responses, however, only companies approved by FCPS' Purchasing Department will be considered for contract award.

## 6. MBE REQUIREMENTS = Not Applicable

a. The contract or supplier who provides materials, supplies, equipment and/or services for this construction project shall attempt to achieve the result that a minimum of **N/A** percent of the total contract value is with certified Minority Business Enterprises, with a minimum of **N/A** percent from certified African American-owned businesses, a minimum of **N/A** percent from Asian American-owned businesses, and the balance from any certified Minority Business Enterprises. All contractors, including certified MBE firms, when submitting bids or proposals as prime contractors, are required to attempt to achieve the MBE goal and subgoals from certified MBEs.

b. Effective May 13, 2013, all contracts containing certified MBE participation goals shall contain a liquidated damages provision that applies if the contractor fails to comply in good faith with the provisions of State MBE laws or the pertinent terms of the procurement contract. (Code of Maryland Regulations (COMAR) 21.11.03.10(E)).

c. Liquidated Damages Provision
This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise (MBE) Program and contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed.

The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

i. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): $211.40 per day until the monthly report is submitted as required.

ii. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): $105.70 per MBE subcontractor.

iii. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by the MBE firm for the contract.

iv. Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

v. [Do Not Include In Contracts That Are Subject To Section 15-226 Of The State Finance And Procurement Article – Construction Contracts – Prompt Payment Of Subcontractors]. Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of this contract: not to exceed $100.00 per day until the undisputed amount due to the MBE subcontractor is paid.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.

## 7. PREVAILING WAGE RATES = Not Applicable

When applicable, the vendor will comply with Section 17-201 through 17-226 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended, which requires payment of prevailing wages as determined by the Commissioner of Labor on public works projects.

## 8. BID BOND

a. Each bidder shall submit with their bid a certified check, cashier's check or bid bond acceptable to the FCPS, for at least five percent (5%) of the amount of TOTAL BID. Each bidder agrees that they will, if awarded the contract, at the time of entering into agreement, furnish to FCPS proper payment and performance bonds naming the Board of Education of Frederick County for the full amount of the contract guaranteeing the faithful performance of all conditions thereof, and the payment in full to all parties furnishing labor and materials or other services on its account.

b. Failure to furnish the required documentation within ten (10) calendar days after receipt of the Notice of Award letter may result in the forfeiture of the submitted surety unless FCPS is responsible for the delay.

c. Certified checks, or cashier's checks, submitted as bid surety will be returned to the awarded vendor upon receipt of required documentation.

## 9. PRODUCT SUBSTITUTIONS

Bidders are referred to paragraphs contained within the General Requirements and the Technical Specifications for information concerning product substitution.

## 10. TAXES

a. No charge will be allowed for federal excise, state, and/or municipal sales and use taxes, from which the Board of Education of Frederick County is exempt.

b. A contractor is not eligible, per the Maryland Comptroller's Office, to utilize the tax exemption certificate for governmental agencies.

## 11. BID OPENING

a. Sealed bids will be opened at the location, date, and time indicated on the solicitation cover sheet.

b. All bids received must include original signatures; no photo copies will be accepted. Unless specifically authorized, facsimile or emailed bids will not be considered. No bids will be accepted via telephone.

c. Complete evaluation of the proposals will not take place at the bid opening and no indication of award will be made. A final recommendation(s) shall be prepared for review and approval by the Board of Education of Frederick County.

d. The recommended award will be posted to the FCPS BoardDocs website a minimum of five days prior to the Board of Education meeting in which it will be presented.

e. Final award recommendation, and the bid tabulation, will be posted on the FCPS webpage, www.fcps.org/bidlist, after the Board of Education of Frederick County approval.

## 12. ERRORS IN BID SUBMISSIONS

a. Bidders, or their authorized representatives, are expected to fully inform themselves as to the conditions and requirements of the specifications before submitting bids. Failure to do so will be at the bidder's own risk.

b. If the bidder has made an error, the bidder may request, in writing, to have their bid withdrawn. The request must be received in the Purchasing Department within one business day after the time established for the bid opening and include written documentation substantiating the error. Approval of a bidder's request is not automatic and may be given only by the Purchasing Manager. Requests for withdrawal are usually denied, unless the bidder proves to the satisfaction of the Purchasing Manager that the mistake was either a scrivener's error or another type of clearly unintentional error so departing from customary and reasonable business practices as to be obvious and to legitimately and substantially impair the vendor's business.

c. Neither law nor regulations make allowance for errors either of omission or commission on the part of the bidders. In case of error in multiplication of unit price when arriving at total price per line item, the unit price shall govern. If there is a discrepancy between the price written in numbers and the price written in words, the words will govern.

## 13. AWARDS OR REJECTION OF BIDS

a. The basis of award shall be the lowest responsible bidder submitting a responsive bid that conforms to the specifications established in the solicitation with consideration given to the quantities involved, time required for delivery, purpose for which required, competency and responsibility of bidder, the ability of the bidder to perform satisfactory service, and the plan for utilization of minority contractors, if applicable.

b. FCPS reserves the right to determine completeness and/or timeliness of bids, to reject any or all bids in whole or in part, to make partial awards, to waive any informality in any quotation, to increase or decrease quantities if quantities are listed in the bid, to reject any bid that shows any omissions, alterations of form, additions not called for, conditions, or alternate proposals, and to make any such award as is deemed to be in its best interest.

c. Bidders may be required, before the awarding of a contract, to show to the complete satisfaction of FCPS, that they have the necessary facilities, ability and financial resources to execute the contract in a satisfactory manner, and within the time specified. Bidders may be required to demonstrate they have the necessary experience, history and references to assure FCPS of their qualifications.

d. The Board of Education of Frederick County reserves the right to award the bid within 90 days from the date of the bid opening unless a different time period is stated in the bid document.

e. In the event of a tie, where all other factors, such as past performance, are considered comparable, the award shall be made to the Frederick County based bidder; the closest Maryland out-of-county based bidder; and the closest out-of-state based bidder, in that order of preference.

f. FCPS does not have local, state or federal preference requirements except when mandated by a targeted funding source.

g. If, after competitive sealed bids have been opened, the Purchasing Manager determines that only one responsible bidder has submitted a responsive bid, the procurement contract may be negotiated with that one bidder as sole source procurement.

h. A recommendation for the award of a contract will be presented to the Board of Education of Frederick County for approval. Upon approval of the award of contract, the bidder(s) shall be notified of their award(s). If applicable, an FCPS contract document shall also be issued.

i. The Board of Education of Frederick County reserves the right to reject the bid of a bidder who has, in the opinion of FCPS, failed to properly perform under previous contracts, or, who investigation shows, is not in a position to perform the contract.

j. The Board of Education of Frederick County retains the right to reject any and all bids, if it is deemed in the best interest of FCPS to do so.

k. If, during the life of the contract, a product or service does not meet the solicitation terms and conditions, FCPS retains the right to cancel the awarded item(s) and award to a new bidder, as long as that bidder mutually agrees to the award.

## 14. CONTRACT FORMATION

a. Notification of the contract award will be made by letter after approval by the Board of Education of Frederick County.

b. The form of contract between the owner and the awarded bidder shall be AIA Document A101, Standard Form of Agreement Between Owner and Contractor (2007 edition) including the AIA A201 General Conditions of the Contract for Construction (2007 edition), together with any Frederick County Public Schools' agreed upon schedules, addenda, shop drawings, and documents associated with the bid solicitation/submission/award.

c. No amendment, modification or change to the contract shall be effective unless such change is in writing and mutually agreed upon by authorized representatives of FCPS and the awarded vendor(s). Changes may not significantly alter the original scope of the agreement.

## 15. PERFORMANCE AND PAYMENT BONDS

a. If applicable, the awarded vendor(s) may be required to submit either one or both of the following two bonds to the Purchasing Department ten (10) calendar days after receipt of the Notice of Award and in accordance with the terms stated below:

   i. **Performance Bond** in the amount of 100% of the contract value covering faithful performance of the contract; and

   ii. **Payment Bond** in the amount of 100% of the contract value as security for the payment of all persons performing labor and furnishing materials in connection therewith.

b. The cost of the performance bond and payment bonds will be borne by the bidder(s) in all instances.

c. Certified checks in the amounts stated above will be accepted in lieu of the performance bond and payment bond only upon prior approval of the Purchasing Manager. If checks are approved for acceptance in lieu of either bond, they should be in the same amount as these bonds; be separate checks; and should clearly designate the purpose - i.e., performance or payment.

d. Certified checks, if submitted, will be deposited in an FCPS bank account(s). Upon successful completion of the contract, check(s) will be drawn upon the FCPS bank account(s) for the full amounts of both certified checks.

e. Bonds must be approved by surety companies which are named in the most current Circular 570 "Surety Companies Acceptable on Federal Bonds" as issued by the U.S. Treasury, Bureau of Government Finance Operations, Division of Banking and Cash Management, Washington, D.C. 20111. Maryland Code 21-102 – A certificate of authority, or certified copy of a certificate of authority, issued by the Commissioner to a surety insurer shall be accepted as evidence of qualification to become sole surety on a bond, undertaking, recognizance, or other obligation required or allowed by law, or in the charter, ordinances, rules, or regulations of a municipal corporation, board, organization, court, judge, or public officer, without further proof or qualification regarding solvency, credit, or financial sufficiency to act as a surety or bidders must use bonding companies rated by A.M. Best Company of at least A-/VIII.

f. If a bonding company is used that is not on the most current Circular 570, the vendor will be contacted to obtain a bond from an approved surety company and re-submit it to the Purchasing Department within ten (10) calendar days after notification.

g. Upon receipt and approval of the performance bond and payment bond, or the certified check(s), an official purchase order will be issued.

h. The awarded vendor’s security will be retained until they have signed the Owner-Contractor Agreement and Addendum and furnished the required Payment Bond and Performance Bond, guaranteeing payment of damages in the event of failure to perform as agreed, including the prevailing wage rate clause. The Owner reserves the right to retain the security of all bidding contractors until the selected bidder enters into contract, or until ninety (90) calendar days after the bid opening, whichever is shorter. If any bidder refuses to enter into a contract, the Owner may retain his bid security as liquidated damages, but not as a penalty.

i. If bonds are required, and the awarded vendor fails to perform according to the terms of the contract, the bonding company will be notified in writing with a copy sent to the vendor.

## 16. INSURANCE REQUIREMENTS

Reference AIA Document A101-2007 Article 10, Insurance and Bonds for insurance requirement types and limits.

## 17. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

a. It is anticipated that construction will commence on or around July 1, 2020.

b. Substantial completion shall be achieved by August 23, 2020.

## 18. PROTESTS

a. The Purchasing Manager or designee (when the Purchasing Manager administers the bid being protested) shall attempt to resolve, informally, all protests of bid award recommendations. Bidders are encouraged to present their concerns promptly to the Contract Manager for consideration.

   i. The bidder must submit their concern, in writing, addressed to the Purchasing Manager. It should include the following:

      • Name, address, contact information of the protestor;
      • Statement of reasons for the protest;
      • Supporting documentation to substantiate the claim;
      • The remedy sought.

   ii. The protest must be received by the Purchasing Manager at least two calendar days prior to the date of the Board of Education meeting at which the recommendation will be presented. It is the vendor's responsibility to ascertain the date and time of award.

   iii. A bidder who does not file a timely protest before the contract is awarded by the Board of Education of Frederick County is deemed to have waived any objection.

1. The Purchasing Manager shall inform the Chief Financial Officer and/or general counsel upon receipt of the protest, and shall confer with them prior to the issuance of a decision regarding disputes of contracts or awards valued at $25,000 or above.

2. The Purchasing Manager shall issue a decision in writing.

3. Should the protestor disapprove of the Purchasing Manager's decision, they have the right to address the Board of Education of Frederick County during the public comment section of the same Board meeting where the award recommendation is scheduled for award.

4. The Board of Education of Frederick County's decision is deemed the final action at the local level.

5. A bidder may appeal a decision of the Board directly to the Maryland State Board of Education in accordance with Board Policy 105.11 and Maryland law.

## 19. MULTI-YEAR CONTRACT

a. Contracts that require funding appropriation for more than one fiscal year automatically terminate if money sufficient for the continued performance is not appropriated for any fiscal year. The date of termination is the last day of the fiscal year for which money was last appropriated, or the date provided in the termination clause of the procurement contract, whichever is earlier.

b. If the multi-year contract is terminated due to lack of funding, FCPS shall reimburse the vendor for the reasonable value of any nonrecurring costs that were incurred as a result of the multi-year contract, but not amortized in the price of the supplies or services delivered under the multi-year contract. The reasonable value will be negotiated, and mutually agreed upon, by FCPS and the vendor.

c. The cost of termination may be paid from any appropriation available for that purpose.

## 20. TERMINATION FOR DEFAULT

a. When an awarded vendor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of FCPS. FCPS may, by written notice of default to the vendor, terminate the whole or any part of the contract in any of the following circumstances:

   i. If the vendor fails to perform the services or provide the products within the time and manner specific herein or any extension thereof, or:

   ii. If the vendor fails to perform any of the provisions of this contact, or fails to make progress as to endanger performance of this contract, in accordance with its terms and in either of these two circumstances does not cure such failure within a period of ten calendar days (or longer as authorized by the Purchasing Manager) after receipt of written notice from the Purchasing Manager of such failure, or:

   iii. If the vendor willfully attempts to perform the services other than specified as to coverage, limits, protections, and quality or otherwise, without specified authorization in the form of contract amendment, or:

   iv. If a determination is made by FCPS that the obtaining of the contract was influenced by an employee FCPS having received a gratuity, or a promise therefore, in any way or form.

b. In the event FCPS terminates the contract in whole or in part, FCPS may procure such products and services, in a manner the Purchasing Manager deems appropriate, and the vendor shall be liable to FCPS for any additional cost(s) incurred.

c. If, after notice of termination of this contract under provisions of this clause, it is determined for any reason that the vendor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience.

## 21. TERMINATION FOR CONVENIENCE

The contract may be terminated by FCPS in accordance with this clause in whole, or in part, whenever FCPS determines that such a termination is in the best interest of FCPS. Written notice shall be given a minimum of 30 days in advance. FCPS will pay for all services, in accordance with contract pricing, up to the date of the termination. However, the awarded vendor(s) shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Under this contract, the awarded vendor does not have a right to unilateral termination for convenience.

## 22. HOLD HARMLESS

It is understood that the awarded vendor(s) shall defend and hold harmless the Board of Education of Frederick County, and its representatives, from all suits, actions, or claims of any kind brought about as a result of any injuries or damages sustained by person(s) or property during the performance of this contract.

## 23. CONTRACT DISPUTES

a. Any dispute arising under this contract shall be decided by the Contract Administrator, the Contract Manager and the Purchasing Manager, who will communicate their decision to writing and furnish a copy to the vendor. This decision shall be final and conclusive unless, within 30 days, the vendor furnishes a written appeal addressed to the Board of Education of Frederick County. The local Board of Education has the right to hear appeals as provided by Maryland law.

b. The Board of Education of Frederick County, or its duly authorized representative, will review the appeal for the determination of such appeal and their finding shall be final and conclusive. In connection with any appeal preceding under this clause, the vendor will be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute, the vendor shall proceed diligently with the performance of the contract and in strict accordance with the FCPS staff's decision. Exceptions are decisions determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as to imply bad faith, or not supported by evidence.

c. This clause does not preclude consideration of laws questioned in connection with the decision provided for above.

## 24. LIQUIDATED DAMAGES

a. AIA Document A101, Article 3.3.2 clarification:

In the event that the Contractor does not achieve Substantial Completion as stipulated, including approved extensions, the Contractor and the Contractor's surety shall be liable for and shall pay liquidated damages to the Owner.

The liquidated damages sum of $1.00 per student based on the expected enrollment of **793** students for total liquidated damages in the amount of **$793.00** per day.

## 25. PROVISION OF PORTABLE SANITATION AND REMOVAL OF DEBRIS

a. Vendors are responsible for removal of trash and debris and will confine their apparatus, materials, supplies, and equipment in such orderly fashion at the work site so that it will not unduly interfere with the progress of the work of any other vendor.

b. It will be the vendor's responsibility to provide portable sanitation facilities on the work site and secure Health Department or local subdivision approval, when required.

c. They will not interfere with FCPS personnel or students in the performance of this contract. FCPS reserves first right of salvage on all materials removed from FCPS facilities and no salvage values should be assumed in bidding on the project unless so stated in the specifications. Vendors will pay all disposal fees and can recuperate them only by including them in their bid pricing.

d. At the completion of the work, and before final payment is made, vendors will remove all rubbish and debris and will leave the work site clean, including site restoration. Vendors will remove all tools, scaffolding and surplus materials from and about the building. In case of dispute, FCPS may remove the rubbish and/or repair property and charge such costs to the vendor.

## 26. PROTECTION OF WORK AND PROPERTY

a. The vendor will be solely responsible for initiating, maintaining and supervising all safety precautions and programs in the performance of this contract and will be responsible for observing the safety regulations of MOSHA, OSHA, and local life safety agencies.

b. The vendor will erect and maintain, as required by conditions and progress of the work, all necessary safeguards for safety and protection, including fences, railing, barricades, lighting, posting of danger signs and other warnings against hazards.

c. The vendor will comply with applicable laws, ordinances, regulations and orders of governing authorities having jurisdiction for the safety of persons and property to protect them from damage, injury or loss. Any damage, loss or injury resulting from the failure of the vendor to safe guard their work and FCPS property will be borne by the vendor.

d. In the case of inclement weather, or an emergency that threatens the loss or damage of property or life safety, the vendor will be allowed to act in a diligent manner without instructions from FCPS. The vendor will notify the Contract Administrator of their actions as soon as possible. Any claim for compensation by the vendor due to such extra work will be submitted promptly to FCPS for approval

## 27. LAWS AND REGULATIONS

a. The vendor will comply with all Federal, State, and local laws, ordinances and regulations pertaining to work under their charge. If the vendor performs any work which it knows or should know to be contrary to such laws, ordinance, and regulations and without such notices to FCPS they shall bear all costs arising therefrom.

b. All vendors and subcontractors must abide by the Board of Education of Frederick County policies and FCPS regulations while working on school property.

c. The vendor certifies that their firm adheres to or follows non-discriminatory practices with respect to the employment and promotion of personnel without regard to color, creed, race, sex, or national origin.

## 28. AMERICAN STEEL ACT

The vendor will comply with the provisions of Sections 17-301 through 17-306 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended entitled "Steel Procurement for Public Works." The vendor's affidavit of compliance with these provisions may be required before payment can be made.

## 29. EMPLOYMENT OF CHILD SEX OFFENDERS AND PERSONS WITH UNCONTROLLED ACCESS TO STUDENTS

a. Be advised that individuals who are registered sex offenders are not eligible to work on any FCPS' project. The awarded vendor(s) must initially check the Maryland Department of Public Safety & Correctional Services' Maryland Sex Offender Registry and search for the name of any employee to be assigned to work on this project. This applies to subcontractors and material/equipment suppliers as well. For projects lasting more than a few months, the vendor will periodically re-check the names of workers against the registry to ensure ongoing compliance. In the event that a registered sex offender is discovered to be working on a FCPS project, whether through employment by the vendor, subcontractor or equipment or material supplier, FCPS will notify the site superintendent to immediately remove the individual from the premises and permanently terminate his work assignment. FCPS may terminate this contract at no additional costs, as a result if the vendor is unable to demonstrate they have exercised care and diligence in the past in checking the Maryland registry.

b. Contracted service providers who have regular, direct and unsupervised access to children cannot begin service without undergoing the same process as new employees per FCPS Regulation 300-33. If required, an awarded vendor(s) is responsible for payment of the full cost of the criminal background check. Additional information regarding this requirement will be found in Section II.

c. The awarded vendor(s), or subcontractor(s), may not knowingly assign an employee to work on FCPS school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of a crime identified as a crime of violence.

d. The awarded vendor(s) will not assign employees who has been convicted of an offense under § 3-307 or § 3-308 of the Criminal Law Article or an offense under the laws of another state that would constitute a violation of § 3-307 or § 3-308 of the Criminal Law Article if committed in the state.

e. An awarded vendor will not assign employee who has been convicted of a crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in this state.

**30. DRUG, ALCOHOL, AND TOBACCO-FREE WORKPLACE**

a. All awarded vendors and subcontractors must abide by Board Policy 112 while working on any FCPS property at all times.

b. The Board of Education of Frederick County endorses the provisions of Public Law 100-690, Title V, Subtitle D (Drug-Free Workplace Act of 1988) and Public Law 101-226 (The Drug-Free Schools and Communities Act of 1989) and regulations promulgated there under and establishes a drug-free and alcohol-free workplace and school system.

c. Maryland State Law (COMAR 13A.02.04) provides that each local school system is required to maintain a tobacco-free school environment.

**31. WEAPON POSSESSION ON SCHOOL PROPERTY**

a. The criminal code of Maryland makes it illegal to possess a weapon on school property.

b. No person shall carry or possess any rifle, gun, knife, or deadly weapon of any kind on FCPS property.

c. Any awarded vendor(s) whose employees violate this clause may be subject to the termination of the contact for cause.

**32. ILLEGAL IMMIGRANT LABOR**

The use of illegal immigrant labor to fulfill contracts solicited by FCPS is in violation of the law and is strictly prohibited. Awarded vendor(s) and subcontractors must verify employment eligibility of workers in order to assure that they are not violating federal/state/local laws regarding illegal immigration. A compliance audit may be conducted.

**33. STUDENT/STAFF CONFIDENTIALITY**

Under no circumstances may any vendor/contractor/provider/consultant release, disclose, sell or otherwise use names, addresses, or any other information related to students, or staff, of FCPS and may only use this information for purposes required under any contract/agreement or memorandum of understanding.

## 34. PUBLIC INFORMATION ACT NOTICE

a. Bidders should identify those portions of their solicitation, which they deem to be confidential, or to contain proprietary commercial information or trade secrets. Bidders should provide justification why such material, upon request, should not be disclosed by FCPS under the Public Information Act, Title 4, General Provisions Article, Annotated Code of Maryland.

b. Unless portions of a solicitation are identified as confidential, all records are considered public. A person or governmental unit that wishes to inspect a public record, or receive copies of a public record, shall submit a written or electronic request and direct it to the Office of Legal Services per FCPS Regulation 200-42.

## 35. FORCE MAJEURE

Force Majeure is defined as an occurrence beyond the control of the affected party and not avoidable by reason of diligence. It includes the acts of nature, war, riots, strikes, fire, floods, epidemics, terrorism, or other similar occurrences. If either party is delayed by Force Majeure, said party shall provide written notification to the other within 48 hours. Delays shall cease as soon as practicable and written notification of same provided. The time of contract completion may be extended by contract modification, for a period of time equal to that delay caused under this condition. FCPS may also consider requests for price increase for raw materials that are directly attributable to the cause of delay. FCPS reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of Force Majeure, and the vendor shall have no recourse against FCPS. Further, except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of Force Majeure as defined herein.

## 36. ETHICS POLICY

a. The Board of Education of Frederick County has an Ethics Policy, which covers conflict of interest, financial disclosure and lobbying. All bidders are expected to comply with any and all Ethics Policies that may apply to them individually or as a business entity.

b. All bidders should carefully review Board Policy 109, Ethics, which prohibits FCPS employees from benefiting from business with the school system.

## 37. NON-COLLUSION

a. Bidder represents and certifies that prices for these services have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition or any matter related to such prices with any competitor or other bidder. Prices quoted in this bid have not been knowingly disclosed directly or indirectly to any competitor or other vendor prior to the opening of this bid.

b. Bidder represents and certifies that it has not employed or retained any other company or person (other than a full-time bona fide employee working exclusively for the bidder) with the primary intent to solicit or secure the contract.

## 38. CONFLICT OF INTEREST

The bidder will advise FCPS in writing as soon as possible, but not later than the date of award of the contract, of any known relationships with a third party, or FCPS employee or representative, which would present a significant advantage to one bidder over another bidder or present a conflict of interest with the rendering of products and services under this agreement.

## 39. eMARYLAND MARKETPLACE ADVANTAGE REGISTRATION

Contractors are required to register with eMaryland Marketplace Advantage www.procurement.maryland.gov within five days following notice of award. Maryland law requires local and state agencies to post award notices on eMaryland Marketplace Advantage. This cannot be done without the contractor's self-registration in the system. Registration is free. Failure to comply with this requirement may be considered grounds for default. It is recommended that any interested bidder register with eMaryland Marketplace Advantage regardless of the award outcome for this procurement as it is a valuable resource for bid notification for municipalities through Maryland.

## 40. MULTI-AGENCY PARTICIPATION

a. FCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland, as well as, any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This is conditioned upon mutual agreement of all parties pursuant to special requirements, which may be appended thereto. The awarded vendor(s) agrees to notify the issuing body of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested.

b. By agreeing to extend the contract to other agencies, the vendor(s) reaffirms and warrants his original commitment to FCPS so that afterwards all items and services shall continue to conform to the requirements and conditions of the original agreement for its duration. Agencies who utilize the contract agree to notify FCPS Purchasing Department of any significant experiences, problems or issues which may, or may have the potential to, affect our administration of this contract.

c. FCPS assumes no obligation on behalf of any other agency and shall be held harmless if either party is damaged due to the agency or vendor's failure to become informed of, or comply with, any provision or pricing under this agreement. All purchase orders and billing will be transacted between the vendor and the public agency.

d. Each participating jurisdiction or agency shall enter into its own contract with the awarded vendor(s) and this contract shall be binding only upon the principals signing such an agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the awarded vendor(s). The Lead Agency does not assume any responsibility other than to obtain pricing for the specifications provided.

**FREDERICK COUNTY PUBLIC SCHOOLS**
PURCHASING DEPARTMENT
191 SOUTH EAST STREET
FREDERICK, MARYLAND 21701
Telephone #301-644-5116

**BID 20C10, MULTI-CLASSROOM PORTABLE UNIT FOR OAKDALE ELEMENTARY SCHOOL**

**FORM OF PROPOSAL**

In compliance with the Invitation to Bid and Bid Documents, the undersigned proposes to furnish all labor, specified materials, and specified equipment and incidentals in accordance with the plans, specifications and bid documents.

**Funding is contingent upon Board approval of the requested FY21 Capital Improvements Projects Budget.**

Base Bid - Base Bid: To provide all material, labor, equipment and services required Provide and install a 6-classroom modular building with a wet floor section per the plans and specification.

**Base Bid 1** – All work associated with the installation of the Modular Classroom with wet section, including, foundations, tiedowns, skirting, sprinkler system, aluminum decks and ramps.

($_____) _____
Numeric Written in Words

**Base Bid 2** – All work associated with the installation of electrical services to the Modular Classroom.

($_____) _____
Numeric Written in Words

**Base Bid 3** – All work associated with the installation of 1 ½" water supply services to the Modular Classroom.

($_____) _____
Numeric Written in Words

**Base Bid 4** – All work associated with the installation of 4" water supply services to the Modular Classroom.

($_____) _____
Numeric Written in Words

**Base Bid 5** – All work associated with the installation of sewer connections from the Modular Classroom to the existing Frederick County Sewer collection system.

($_____) _____
Numeric Written in Words

I. **Unit Prices**

The unit prices listed below shall be available for FCPS and other Jurisdictions that may want to purchase modular buildings. The pricing provided on bid day shall be effective from the date of award through June 30, 2021, with four, one-year renewal terms available. All terms and conditions of the original contract apply to any such renewal.

All prices shall remain firm through the initial contract period. Price decreases are acceptable at any time, need not be verifiable, an are required should the contractor/producer/manufacturer experience a decrease in costs associated with the execution of the contract. Price adjustments from the contractor/producer/manufacturer may be considered

at renewal. The request is subject to approval by the Contracting Officer. The request must be submitted in writing at least 60 days prior to the renewal term and shall be accompanied by supporting documentation.

Each unit price cost shall include all requirements found in the Scope of Services section, with the exception of transportation. Transportation costs shall be submitted on a per project basis, as a separate quotation, which shall be added to the cost of the building being purchased. Should the building finish floor be established over 3.5 feet above finish grade, the contractor may request a cost adjustment to the unit price for increases due to site elevation differences.

The unit price includes all overhead and profit for the Subcontractor and Contractor.

In the event that the Owner requests a modification to an established unit price item, the vendor may adjust the unit pricing to accommodate the revised building requirements. This adjustment may result in an increase, or decrease, of the unit price, based off the modifications. The vendor shall submit documentation showing how the building modification(s) impacted the originally submitted unit pricing.

| **Item #** | **Description of Item** | **Unit Cost** |
|---|---|---|
| 1. | Provide and install one 4 classroom modular building with building sprinkler system. | **$** _____ |
| 2. | Provide and install one 4 classroom modular building, wet floor section with building sprinkler system. | **$** _____ |
| 3. | Provide and install one 6 classroom modular building with building sprinkler system. | **$** _____ |
| 4. | Provide and install one 6 classroom modular building, wet floor section with building sprinkler system. | **$** _____ |
| 5. | Provide and install one 8 classroom modular building with building sprinkler system. | **$** _____ |
| 6. | Provide and install one 8 classroom modular building, wet floor section with building sprinkler system. | **$** _____ |
| 7. | Decks and ramps to grade at each modular building entry point. | **$** _____ |
| 8. | When requested the actual cost for installation of water, sewer and or electrical services may be provided with the following mark-up %. | **$** _____ |

II. **Substantial Completion Date: August 23, 2020**

III. I/We certify that this bid/proposal is made without previous understanding, agreement, or connection with any person, firm, or corporation submitting a bid/proposal for the same goods/services and is, in all respects fair and without collusion or fraud; that none of this company's officers, directors, partners or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of Frederick County, Administrative or Supervisory Personnel or other employees of the Frederick County Public Schools, has any interest in the bidding company except as follows:

COMPANY: _____

dba: _____

REGISTERED MARYLAND CONTRACTOR NUMBER: _____

FEDERAL IDENTIFICATION: _____ DATE: _____

The undersigned has familiarized themselves with the conditions affecting the work, the specifications, and is legally authorized to make this proposal on behalf of the Contractor listed above.

NAME (please print): _____

SIGNATURE OF ABOVE: _____

TITLE: _____

ADDRESS: _____

_____

TELEPHONE # _____ FAX # _____

E-MAIL ADDRESS (for correspondence): _____

E-MAIL ADDRESS (for receiving Purchase Orders): _____

(DO NOT COMPLETE THIS AREA IF YOUR COMPANY IS UNABLE TO RECEIVE PURCHASE ORDERS ELECTRONICALLY)

……

**ACKNOWLEDGMENT OF ADDENDA (if applicable)**

The above-signed company/firm acknowledges the receipt of the following addenda for the above-referenced solicitation.

Date Received by Proposer/Bidder:

Addendum #1 _____ Addendum #2 _____

Addendum #3 _____ Addendum #4 _____

Addendum #5 _____ Addendum #6 _____

END OF PROPOSAL FORM

BID 20C10, MULTI-CLASSROOM PORTABLE UNIT FOR OAKDALE ELEMENTARY SCHOOL
FREDERICK COUNTY PUBLIC SCHOOLS
STATUTORY AFFIDAVIT AND NON-COLLUSION CERTIFICATION

Special Instructions: An authorized representative of the bidder needs to complete the following affidavit and insert an answer to paragraphs 1 and 3.

BIDDERS: The submission of the following Affidavit at the time of the bid opening is:

[X] requested to be completed but not required to be notarized.

[ ] required to be completed and notarized.

I, _____, being duly sworn, depose and state:

1. I am the _____ (officer) and duly authorized representative of the firm of

the organization named _____ whose address is
(Name of Corporation)
_____ and that I

possess the authority to make this affidavit and certification on behalf of myself and the firm for which I am acting.

2. Except as described in paragraph 3 below, neither I, nor to the best of my knowledge, the above firm, nor any of its officers, directors, or partners, or any of its employees who are directly involved in obtaining or performing contracts with any public bodies has:

   a. been convicted of bribery, attempted bribery, or conspiracy to bribe, under the laws of any state or of the federal government;

   b. been convicted under the laws of the state, another state, or the United States of: a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

   c. been convicted of criminal violation of an antitrust statute of the State of Maryland, another state, or the United States;

   d. been convicted of a violation of the Racketeer influenced and Corrupt Organization Act, or the Mail Fraud Act, for acts in connection with the submission of bids or proposals for a public or private contract;

   e. been convicted of any felony offenses connected with obtaining, holding, or maintaining a minority business enterprise certification, as prohibited by Section 14-308 of the State Finance & Procurement Article;

   f. been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction under any of the laws or statutes described in Paragraph (a) through (e) above; or

   g. been found civilly liable under an antitrust statute of this State, another state, or the United States for acts or omissions in connection with the submission of bids or proposals for a public or private contract.

3. The only conviction, plea, or admission by any officer, director, partner, or employee of this firm to involvement in any of the conduct described in Paragraph 2 above is as follows:

   If none, write "None" below. If involvement, list the date, count, or charge, official or administrative body, the individuals involved, their position with the firm, and the sentence or disposition of the charge.

(you may attach an explanation if necessary)

4. I affirm that this firm will not knowingly enter into a contract with a public body under which a person or business debarred or suspended under Maryland State Finance and Procurement Title 16, subtitle 3, Annotated Code of Maryland, as amended, will provide, directly or indirectly, supplies, services, architectural services, construction-related services, leases of real property, or construction.

5. I affirm that this proposal or bid to the Board of Education of Frederick County is genuine and not collusive or a sham; that said bidder has not colluded, conspired, connived and agreed, directly or indirectly, with any bidder or person to put in a sham bid or to refrain from bidding and is not in any manner, directly or indirectly, sought by agreement of collusion or communication or conference, with any person to fix the bid prices of the affidavit or any other bidder, or to fix any overhead, profit or cost element of said bid price, or that if any bidder, or to secure an advantage against the Board of Education of Frederick County or any other person interested in the proposed contract; and that all statements in the proposal or bid are true. I acknowledge that, if the representations set forth in this affidavit are not true and correct, the Board of Education of Frederick County may terminate any contract awarded and take any other appropriate action.

I DO SOLEMNLY DECLARE AND AFFIRM under the penalties of perjury that the contents of this affidavit are true and correct, that I am executing this Affidavit in compliance with Section 16-311 of the State Finance and Procurement Article, Annotated Code of Maryland, and in compliance with requirements of the Board of Education of Frederick County, and that I am executing and submitting this Proposal on behalf of and as authorized by the bidder named below.

_____
(Legal Name of Company)

_____
(dba)

_____
(Address)

_____
(City) (State) (Zip)

_____
(Telephone) (Fax)

_____
(Print Name) (Title) (Date)

_____
(Signature) (Title) (Date)

We are/I am licensed to do business in the State of Maryland as a:
( ) Corporation ( ) Partnership ( ) Individual ( ) Other

If required to be notarized:

_____ _____
(Witness) (Title)

SUBSCRIBED AND SWORN to before me on this _____day of _____, 20___.

_____
NOTARY PUBLIC

My Commission Expires: _____

Revised 01.20.2016

**BID 20C10, MULTI-CLASSROOM PORTABLE UNIT FOR OAKDALE ELEMENTARY SCHOOL**
**FREDERICK COUNTY PUBLIC SCHOOLS**

## CERTIFICATION OF COMPLIANCE

1. All Contractors, subcontractors or vendors must abide by FCPS Board policies and regulations while working on FCPS property.

2. Maryland Law requires that any person who enters into a contract with a county board of education may not knowingly employ an individual to work at a school (or FCPS facility) if the individual is a registered sex offender. Please reference §11-113 of the Criminal Procedure Article of Maryland Code for penalty.

3. Be advised that individuals who are registered sex offenders are not eligible to work on any FCPS project. The Contractor must initially check the Maryland Department of Public Safety & Correctional Services' MARYLAND SEX OFFENDER REGISTRY and search for the name of any employee to be assigned to work on this project. This applies to subcontractors and material/equipment suppliers as well.

4. In the event that a registered sex offender is discovered to be working on a FCPS project, whether through employment by the prime Contractor, subcontractor or vendor, the site superintendent will immediately remove the individual from the premises and permanently terminate his work assignment. FCPS may terminate this contract as a result if the Contractor is unable to demonstrate he has exercised care and diligence in the past in checking the Maryland registry.

5. Effective July 1, 2015, amendments to §6-113 of the Education Article of the Maryland Code further require that a contractor or subcontractor or vendor for a local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving:

    a. A sexual offense in the third or fourth degree under §3-307 or §3-308 of the Criminal Law Article of the Maryland Code.

    b. Child sexual abuse under §3-602 of the Criminal Law Article of the Maryland Code or any other State; or

    c. A crime of violence as defined in §14-101 of the Criminal Law Article of the Maryland Code or any other State

6. With the passing of Maryland Law MD. Code, Educ. 6-113.2, employers of all contracted staff must obtain background information relating to child sexual abuse or sexual misconduct. This means that all contracted staff having direct contact with students must meet all of the FCPS and Maryland State Department of Education (MSDE) requirements before doing business with FCPS. See: Maryland State Department of Education Website; House Bill 486 Child Sexual Abuse and Sexual Misconduct Prevention; MSDE Guidelines For MD. Code, Educ. 6113.2; and Employment History Review Form for Child Abuse and Sexual Misconduct for additional information.

    In addition, there has been no change to the current FCPS requirement, that all contracted staff who have contact with students are required to be fingerprinted in order to obtain a criminal background check. Fingerprints and background check are still an enforced FCPS requirement.

7. Under recent amendments to §5-561 of the Family Law Article of the Maryland Code, each contractor, subcontractor, or vendor shall certify by signing this affidavit that any individuals in its work-force including sub-contractors, have undergone a criminal background check, including fingerprinting, if the individuals will work in a FCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children.

By my signature below, I affirm under penalties of perjury that the contents of this Certification of Compliance are true to the best of my knowledge, information and belief.

Signature_____Date_____

Print name and title of
signatory_____

Print name of
company_____

# Vendor Conflict of Interest Disclosure Form

All vendors interested in conducting business with Frederick County Public Schools (FCPS) must complete and return the Vendor Conflict of Interest Disclosure Form, in order to be eligible to be awarded a contract with FCPS.

Please note that all vendors must comply with FCPS's conflict of interest certification, as stated below.

If a vendor has a relationship with a FCPS employee or an immediate family member (spouse, child (stepchild or adopted), parent, or sibling) of a FCPS employee, the vendor shall disclose the information required below.

**Certification:** I hereby certify, that to the best of my knowledge, there is no conflict of interest involving the vendor named below:

1. No FCPS employee or the employee's immediate family member has an ownership interest in the vendor's company, or is deriving personal financial gain from this contract.
2. No retired or separated FCPS employee who has been retired or separated from the organization for less then one (1) year has an ownership interest in the vendor's company.
3. No FCPS employee is contemporaneously employed or prospectively to be employed with the vendor.
4. The vendor did not provide any information or criteria in the drafting of the solicitation prior to it being advertised for competitive pricing.
5. Vendor hereby declares it has not, and will not provide gifts or hospitality of any dollar value, or any other gratuities to FCPS employee to maintain a contract.
6. Vendor hereby declares that in the process of preparing a quote/bid/proposal for FCPS, there have been no acts of bribery, extortion, trading, laundering of corrupt practices, and/or nepotism have transpired between FCPS employee and the vendor.
7. Please note any other exceptions below.

| **Vendor Name & Email** | **Vendor Address & Phone Number** |
|---|---|
| | |
| **Conflict of Interest Disclosure** | |
| Name of FCPS employee or immediate family member with whom there may be a potential conflict of interest. *If no conflict of interest, write "N/A" and initial.* | Disclose the relationship to the employee or the immediate family member, their interest in the vendor's company, and any additional information |
| | |

I certify that the information provided is true and correct by my signature below:

_____ _____

Signature of Vendor Authorized Representative/Date

Printed Name of Vendor Authorized Representative

# AIA® Document A310™ – 2010

## *Bid Bond*

**CONTRACTOR:**
*(Name, legal status and address)*

**SURETY:**
*(Name, legal status and principal place of business)*

**OWNER:**
*(Name, legal status and address)*
The Board of Education of Frederick County
191 South East Street
Frederick, Maryland 21701-5918

**BOND AMOUNT:** $

**PROJECT:**
*(Name, location or address, and Project number, if any)*
New Multi-Classroom Portable Unit
Oakdale Elementary School
5830 Oakdale School Road
Ijamsville, Maryland 21754
Bid 20C10

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so

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**User Notes:** (1752655218)

furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this day of ,

| | |
|---|---|
| | *(Contractor as Principal)* *(Seal)* |
| *(Witness)* | *(Title)* |
| | *(Surety)* *(Seal)* |
| *(Witness)* | *(Title)* |


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# *Additions and Deletions Report for*
## *AIA® Document A310™ – 2010*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:04:06 ET on 02/12/2020.

**PAGE 1**

The Board of Education of Frederick County
191 South East Street
Frederick, Maryland 21701-5918

...

New Multi-Classroom Portable Unit
Oakdale Elementary School
5830 Oakdale School Road
Ijamsville, Maryland 21754
Bid 20C10

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:04:06 ET on 02/12/2020 under Order No. 4323301581 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A310™ – 2010, Bid Bond, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

*(Signed)*

_____

*(Title)*

_____

*(Dated)*

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# AIA® Document A101™ – 2017

## *Standard Form of Agreement Between Owner and Contractor* *where the basis of payment is a Stipulated Sum*

**AGREEMENT** made as of the day of in the year
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address and other information)*

The Board of Education of Frederick County
191 South East Street
Frederick, Maryland 21701-5918

and the Contractor:
*(Name, legal status, address and other information)*

for the following Project:
*(Name, location and detailed description)*

New Multi-Classroom Portable Unit
Oakdale Elementary School
5830 Oakdale School Road
Ijamsville, Maryland 21754
Bid 20C10

The Architect:
*(Name, legal status, address and other information)*

N/A

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

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8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

## ARTICLE 2 THE WORK OF THIS CONTRACT

**§ 2.1** The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. In addition to performing the Work as described in the Contract Documents, the Contractor shall perform the Work in accordance with all applicable ordinances, building codes, statutes, regulations and guidelines of all federal, state and local government authorities having jurisdiction over the Project.

**§ 2.2** The Architect will schedule and the Contractor shall attend the Pre-Construction Meeting and Progress Meetings. The Contractor shall require the attendance of Subcontractors at the meetings as needed or as required by the Architect or Owner. The Contractor shall provide to the Architect and Owner either prior to or during each progress meeting such reports and documentation requested by the Architect and Owner regarding the progress and performance of the Work and the percentage of completion of Contract and all Subcontracts.

**§ 2.3** In addition to progress and review meetings, the Contractor shall attend additional meetings with the Owner as needed and at the Owner's sole discretion. The Owner may designate the location and time of such meetings.

**§ 2.4** Within (14) days after the Owner issues the notice to proceed the Contractor shall submit a Preliminary Contractor Schedule, the Preliminary Contractor Schedule shall indicate task(s) (the work), duration(s) (start and completion) and be compliant with the dates indicated for Substantial Completion as required by the contract. Preliminary Contractor Schedule shall be in a Critical Path Method (CPM) and bar chart format, indicating sufficient detail, task(s) (the work) and durations(s) (start and completion) of each major item of the Work, the current status of each major item of Work indicating staffing and equipment to comply with the Schedule. The Contract Schedule must be submitted for the Owners review as a condition precedent to the Contractor submission of the first application for Payment. Contractor shall provide additional detail when requested by the Architect or Owner and update the Contractor Schedule to be compliant with the Substantial Completion date(s) including only owner approves time extensions. Within 7 days of a request by the Architect or Owner, the Contractor shall furnish to the Architect and Owner a Progress Schedule showing the current progress and completion stage of the Work as compared to the


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Contract Schedule. Progress Schedule shall clearly identify any item of Work, which is behind the Contract Schedule along with the Contractor's increase in manpower and equipment necessary to comply with the updated Contract Schedule.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ ] The date of this Agreement.

[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion**

**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
*(Check one of the following boxes and complete the necessary information.)*

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ X ] By the following date:

**§ 3.3.2** The Contractor acknowledges and agrees that time is of the essence in achieving Substantial Completion and that a delay in achieving Substantial Completion will result in increased costs to the Owner. In the event that the Contractor does not achieve Substantial Completion as stipulated in Article 3.3, including approved extensions, the Contractor and the Contractor's surety shall be liable for and shall pay liquidated damages to the Owner. For each calendar day required to achieve Substantial Completion beyond the Substantial Completion Date authorized by the Contract, the Contractor shall pay to the Owner all direct costs charged to the Owner plus liquidated damages on account of Owner's staff expense and on account of student inconvenience, disruption, and dislocation the sum of $1.00 per student based upon an expected enrollment of 793 students for total liquidated damages in the amount of $793.00 per day.

*(Table deleted)*

**§ 3.3.3** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

| Portion of Work | Substantial Completion Date |
|---|---|

, subject to adjustments of this Contract Time as provided in the Contract Documents.
*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

**§ 3.4** The Contractor shall not be entitled to any form of damages for being able to achieve Substantial Completion earlier than the date set forth in Paragraph 3.3. Additionally, a Contractor shall not be entitled to any form of damages or other compensation from Owner by reason of delay or interruptions of its work caused by other contractors or utilities working on the project. Contractor shall indemnify Owner against any and all loss, cost, and damages that the


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Owner may be caused to sustain by reason of claims from any other contractor working on the Project caused in whole or in part by the acts of the Contractor or those for whom it is responsible

**ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be ($ ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2 Alternates**

**§ 4.2.1** Alternates, if any, included in the Contract Sum:

| Item | Price |
|---|---|

**§ 4.2.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|

**§ 4.3** Allowances, if any, included in the Contract Sum:
*(Identify each allowance.)*

| Item | Price |
|---|---|

**§ 4.4** Unit prices, if any:
*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

**§ 4.5** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any.)*

See paragraph 3.3.2

**§ 4.6** Other:
*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

The billing period shall be as required herein and as indicated by the specifications. Contactor is required to submit estimated billing by the 28th of each month for the current month. The Contractor must provide a pencil copy for the Architect and Owners review. Contractors' failure to provide estimate billing may delay processing the Application for Payment. Frederick County Public Schools requires overall estimates in compliance with Frederick County Government's funding requirements and in order to obtain funds for Contractor Applications for Payment.


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**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the firsst day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Twenty Fifth (25th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.
*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**.1** Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent ( 5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

**.2** Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent ( 5 %);

**.3** Subtract the aggregate of previous payments made by the Owner; and

**.4** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007 and,

**.5** The requirements of 5.1.8 Reduction or limitation of retainage.

*(Paragraphs deleted)*
**§ 5.1.7** Retainage The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

**.1** Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
*(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*

**.2** Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

*(Paragraphs deleted)*
**§ 5.1.8** Reduction or limitation of retainage, if any, shall be as follows:
*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*


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Five percent (5%) retainage shall be held from progress payments. After issuance of a Certificate of Substantial Completion for the Contract Work, retainage may be reduced at the Owner's sole and discretion. When the Owner and Architect agree that the work, including all Punch List items, has been satisfactorily completed, the retainage may be reduced at the Owner's sole option to one percent (1%). Any retainage reduction must be approved by the Architect, Owner and Surety prior to submitting an Application for Payment reflecting such reductions and shall include an executed AIA G707A Consent of Surety to reduction in or Partial Release of Retainage or AIA G707 Consent of Surety to Final Payment.

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

**.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and

**.2** a final Certificate for Payment has been issued by the Architect.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than Thirty (30) days after the issuance of the Architect's final Certificate for Payment, or as follows:

The Contractor shall deliver to the Owner:

a. Final Releases of Liens and Waiver of Claims from the Contractor; and
b. "As-built or Record Drawings" Plans and Specifications showing all changes, locations and installation shall be submitted to the architect for approval and forwarded to the Owner for his approval and acceptance, "As-built or Record Drawings" shall be provided on a drawing set sealed with the Architect's stamp; and
c. Three (3) complete sets of warranties and guarantees in three-ring binders, indexed with a table of contents approved by the Architect; and
d. A statement from the Contractor that there exist no pending or threatened claims against the Owner relating to the Work or for which the Owner may be liable which are unresolved or a statement of any unresolved issues; and
e. All punch list items shall be satisfactorily completed, each punch list item signed and dated indicating when the correction was completed and inspected by the Owner, Architect and Engineer; and
f. The Contractor shall deliver to the Owner attesting that various items of Work have been satisfactory completed in accordance with the requirements of the Contract Documents and in accordance with industry standards of workmanship.

*(Paragraphs deleted)*

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017


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[ X ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
*(Insert rate of interest agreed upon, if any.)*

0.0 % zero percentage

*(Paragraphs deleted)*

**§ 8.23**The Owner's representative:
*(Name, address, email address, and other information)*

**§ 8.4** The Contractor's representative:
*(Name, address, email address, and other information)*

*(Paragraphs deleted)*


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**§ 8.5** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.6**

*(Paragraphs deleted)*

Other provisions:

**§ 8.6.1** The cost of reproducing copies of any additional Construction Documents required for construction shall be at the sole cost of the Contractor.

**§ 8.6.2** The Contractor, Subcontractors and all employees shall conform to all Board of Education policies when on Board of Education property, including but not limited to no smoking and the possession of deadly weapons.

**§ 8.6.3** The Contractor shall appoint a safety officer who shall be available to the Owner. On a regular basis such safety officer shall inspect the job site for compliance to OSHA and MOSHA requirements. In the event of any job site violations of OSHA or MOSHA, the Contractor shall immediately rectify the situation and bring the job site into compliance.

**§ 8.6.4** The Owner may issue a Notice to Contractor for failure to comply with the Contract requirements and/or the Contract Documents. Contractor must respond to such notice as practical, and Owner must receive a written response within two (2) business days of the Contractor's receipt of such notice. Inspections by Owner or the Owner's failure to issue such Notices shall not relieve the Contractor from full compliance with the Contract Documents.

**§ 8.6.5** When Work is to be completed during operation of and use of the building Contractor shall ensure all building systems and egress/ingress remain operable and effective during the hours that the school is in use as determined by the Principal. Dividing walls or partitions shall be erected to separate construction and demolition activities from building activities and egress/ingress shall be maintained as stipulated by the relevant Government authorities, including the Fire Marshal.

**§ 8.6.6** The Contractor and its Subcontractors shall staff the project with competent and experienced superintendents, foreman, and journeyman. The Electrical contractor must provide a Master Electrician and the Plumbing contractor must provide a Master Plumber to work on the Project. The number of apprentices working on the Project shall not exceed the ratio of two apprentices for every journeyman. If requested, the Contractor shall, within twenty-four (24) hours, provide documentation outlining specific experience for a journeyman, foreman or superintendent.

**§ 8.6.7** It is Contractor's sole responsibility to provide utilities, including but not limited to electricity, water, telephone, sewer and gas at the job site during the construction period, notwithstanding the indication of any utilities noted as existing in the Contract Documents.

**§ 8.6.8** The Contractor shall promptly make available to the Owner complete copies of all executed Subcontracts and any changes, modifications or exclusions thereto, upon the Owner's request.

**§ 8.6.9** The Architect or Engineer's approved shop drawings and or samples must be on site before work can begin on the applicable item of Work detailed on the shop drawings or stipulated in the specifications. The Contractor shall make the approved shop drawing available to the Owner's representative as needed to review the installation(s).

**§ 8.6.10** All existing areas, interior and exterior, damaged during construction or renovation, are to be refurbished to their original condition.

**§ 8.6.11** Any soil or excess excavation, including but not limited to rock, which is not required for the finished Work, shall be removed from the site as part of the Contract Sum.

**§ 8.6.12** Notwithstanding any other contract provisions to the contrary, the mechanical system and plumbing system must be completely balances and such balance must be accepted by the Engineer, before the warranty/guarantee period will begin.


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**§ 8.6.13** The Contractor shall provide not less than a 2 year warranty for the project, the 2 year warranty shall not diminish any extended warranty provided by equipment manufacturer's not limited to and including all HVAC equipment and Compressors.

**§ 8.6.14** The Contractor and Subcontractors shall conform to all requirements of the following Maryland General Assembly Policies:

.1 Maryland General Assembly House Bill 642 – Children – Child Care Facilities, Public Schools and Nonpublic Schools – Contractors and Subcontractors.

.2 Maryland General Assembly Senate Bill 508 – Children Care Facilities, Public Schools and Nonpublic Schools – Contractors and Subcontractors.

.3 The Contractor and Subcontractors shall not knowingly hire or retain any individual who has been convicted of a crime involving:

1. An offense under 3-307 of the Criminal Law Article;
2. Child sexual abuse under 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under 3-602 of the Criminal Law Article if committed in the State; or
3. A crime of violence as defined in 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of 14-101 of the Criminal Law Article if committed in this State.

**§ 8.7 Insurance and Bonds**

**§ 8.7.1** The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.**§ 8.7** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 8.8** Other provisions:

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** This Agreement is comprised of the following documents:

**.1** AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

**.2** AIA Document A201™–2017, General Conditions of the Contract for Construction

**.3** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if required, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

**.5** Drawings

| Number | Title | Date |
|---|---|---|

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|


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**.7** Addenda, if any:

| Number | Date | Pages |
|---|---|---|

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

*(Paragraphs deleted)*

**8** Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Frederick County Public Schools Bid Documents for this projects Bid.

## ARTICLE 10 INSURANCE AND BONDS

**10.1** The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

**10.2** Maryland Code 21-102 - A certificate of authority, or certified copy of a certificate of authority, issued by the Commissioner to a surety insurer shall be accepted as evidence of qualification to become sole surety on a bond, undertaking, recognizance, or other obligation required or allowed by law, or in the charter, ordinances, rules, or regulations of a municipal corporation, board, organization, court, judge, or public officer, without further proof or qualification regarding solvency, credit, or financial sufficiency to act as a surety or bidders may use bonding companies from Treasury approved sureties with an AM Best rating of A- or better rating.

**10.3** The Contractor shall provide a Performance Bond with a Penal Sum equal to the Contract Sum. The Contractor shall provide a Payment Bond with a Penal Sum equal to the Contract Sum. All bonds shall be written on MD COMAR 21 07 02 10 Bond and will be from a surety company acceptable to the Owner.

**10.4** The Contractor shall comply with the additional insurance requirements set forth below:

(a) The Board of Education of Frederick County, Frederick County Council, the State of Maryland and the other entities stipulated by the Owner shall be named as an additional insured for ongoing and completed operations on the Contractor policies other than Worker's Compensation.

(b) All policies shall stipulate the Owner is to receive written notice thirty (30) days before cancellation.
(c) The Owner is to receive insurance certificates evidencing the compliance of insurance requirements at least (10) ten days before Work commences.
(d) All insurance policies shall contain a Waiver of Subrogation in favor of the Owner.
(e) General Liability and Umbrella Insurance policies are to be in "Occurrence Form".
(f) Insurance policies shall provide primary coverage to The Board of Education of Frederick County and The Board of Commissioners of Frederick County and the State of Maryland as additional insureds for loss, injury and damage arising out of or associated with the Work under this agreement as opposed to pro-rate with, concurrent with excess to any other insurance coverages by the Owner other than insurance Worker's Compensation Insurance.
(g) The Contractor shall purchase and maintain all insurance from an insurer acceptable to the Owner and lawfully authorized to do business in Maryland.


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**10.5** The Owner shall provide and maintain Builder's Risk Protection throughout the project. The Contractor shall pay the cost of any deductible(s) required by the Builders Risk Protection as provided by the Owner. This provision shall not release the contractor of the obligation to complete the work according to plans and specifications required by the contract and shall be obligated to full performance of the contract's undertaking. For projects where Builders Risk coverage is not applicable, the Contractor will insure all tools, equipment, and property to be installed.

**10.6** The Contractor shall provide insurance pursuant to the requirements set forth below:

| **Type of insurance or bond** | **Limit of liability or bond amount ($0.00)** |
|---|---|
| Part 1 Worker's Compensation Insurance | as required by statute |
| Part 2 Employers Liability: | |
| Bodily Injury by Accident | $ 500,000.00 each accident |
| Bodily Injury by Disease | $ 500,000.00 policy limits |
| Bodily Injury by Disease | $ 500,000.00 each employee |
| Commercial General Liability Insurance, to include, premises, products, completed operations, personal injury and contractual: Aggregate to apply Per Project./Per Location | $1,000,000.00 |
| Each Occurrence | $1,000,000.00 |
| General aggregate Limit (Per Site) | $2,000,000.00 aggregate limit |
| Products and complete operation | $1,000,000.00 each occurrence Limit |
| Personal & advertising injury | $1,000,000.00 |
| Fire damage | $ 50,000.00 |
| Medical Expense (Any One Person) | $ 5,000.00 each occurrence |
| General Liability insurance shall provide coverage for: | |
| Completed Operations to meet the Statute of Repose & Statute of Limitations; | |
| Independent Contractors | |
| Contractual Liability | |
| Broad From Property Damage | |
| Liability arising from Explosion, Collapse and Underground Damage (X, C, U) | |
| Additional insured Endorsement providing coverage as required in section 10.4 (a) | |
| Terrorism-Certified & Non Certified | |
| Option (b1) | |
| Automobile Liability Insurance, including owned, non-owned and hired vehicles | $1,000,000.00 each person |
| Bodily injury liability | $1,000,000.00 each occurrence |
| Property damage liability | |
| Option (b2) | $1,000,000.00 each accident |
| Combined single limit Bodily injury or property damage liability | |
| Umbrella Excess Liability (true following form)* | $5,000,000.00 per Occurrence<br>$5,000,000.00 General Aggregate<br>$5,000,000.00 Products & Completed Operations |
| Any construction contractor providing Mass Grading, Masonry, Structural Steel, Superstructure or foundation concrete, Mechanical or Electrical contractors shall be required to carry the following Umbrella Excess Liability (true following form) minimum limits: | $8,000,000.00 Each Occurrence<br>$8,000,000.00 General Aggregate<br>$8,000,000.00 Products & Completed Operations |
| Contractors Pollution Liability for contractors engaged in testing for, | |


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| monitoring, clean-up, removal, containing, detoxifying, neutralizing, transporting, handling, storage treatment, or disposing of or processing any waste pollutants.<br><br>*CGL & Umbrella limits can vary, but the combined per Occurrence and Aggregate totals must meet or exceed the required occurrence and aggregate limits specified here | $1,000,000.00 per Occurrence<br>$1,000,000.00 Aggregate |

This Agreement entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| Theresa R. Alban, Ph.D., Superintendent of Schools, Superintendent of Schools | |
| *(Printed name and title)* | *(Printed name and title)* |


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## *AIA® Document A101™ – 2017*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

The Board of Education of Frederick County
191 South East Street
Frederick, Maryland 21701-5918

...

New Multi-Classroom Portable Unit
Oakdale Elementary School
5830 Oakdale School Road
Ijamsville, Maryland 21754
Bid 20C10

...

N/A

**PAGE 2**

~~The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.~~**§ 2.1** The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. In addition to performing the Work as described in the Contract Documents, the Contractor shall perform the Work in accordance with all applicable ordinances, building codes, statutes, regulations and guidelines of all federal, state and local government authorities having jurisdiction over the Project.

**§ 2.2** The Architect will schedule and the Contractor shall attend the Pre-Construction Meeting and Progress Meetings. The Contractor shall require the attendance of Subcontractors at the meetings as needed or as required by the Architect or Owner. The Contractor shall provide to the Architect and Owner either prior to or during each progress meeting such reports and documentation requested by the Architect and Owner regarding the progress and performance of the Work and the percentage of completion of Contract and all Subcontracts.

**§ 2.3** In addition to progress and review meetings, the Contractor shall attend additional meetings with the Owner as needed and at the Owner's sole discretion. The Owner may designate the location and time of such meetings.

**§ 2.4** Within (14) days after the Owner issues the notice to proceed the Contractor shall submit a Preliminary Contractor Schedule, the Preliminary Contractor Schedule shall indicate task(s) (the work), duration(s) (start and completion) and be compliant with the dates indicated for Substantial Completion as required by the contract. Preliminary Contractor Schedule shall be in a Critical Path Method (CPM) and bar chart format, indicating sufficient detail, task(s) (the work) and durations(s) (start and completion) of each major item of the Work, the current status of each major item of Work indicating staffing and equipment to comply with the Schedule. The Contract Schedule must be submitted for the Owners review as a condition precedent to the Contractor submission of the first application for Payment. Contractor shall provide additional detail when requested by the Architect or Owner and update the Contractor Schedule to be compliant with the Substantial Completion date(s) including only owner approves time

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extensions. Within 7 days of a request by the Architect or Owner, the Contractor shall furnish to the Architect and Owner a Progress Schedule showing the current progress and completion stage of the Work as compared to the Contract Schedule. Progress Schedule shall clearly identify any item of Work, which is behind the Contract Schedule along with the Contractor's increase in manpower and equipment necessary to comply with the updated Contract Schedule.

**PAGE 3**

[ **X** ] A date set forth in a notice to proceed issued by the Owner.

...

[ **X** ] By the following date:

**§ 3.3.2** ~~Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:~~The Contractor acknowledges and agrees that time is of the essence in achieving Substantial Completion and that a delay in achieving Substantial Completion will result in increased costs to the Owner. In the event that the Contractor does not achieve Substantial Completion as stipulated in Article 3.3, including approved extensions, the Contractor and the Contractor's surety shall be liable for and shall pay liquidated damages to the Owner. For each calendar day required to achieve Substantial Completion beyond the Substantial Completion Date authorized by the Contract, the Contractor shall pay to the Owner all direct costs charged to the Owner plus liquidated damages on account of Owner's staff expense and on account of student inconvenience, disruption, and dislocation the sum of $1.00 per student based upon an expected enrollment of 793 students for total liquidated damages in the amount of $793.00 per day.

~~**Portion of Work** **Substantial Completion Date**~~

**§ 3.3.3** ~~If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.~~Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

**Portion of Work** **Substantial Completion Date**

, subject to adjustments of this Contract Time as provided in the Contract Documents.
*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

**§ 3.4** The Contractor shall not be entitled to any form of damages for being able to achieve Substantial Completion earlier than the date set forth in Paragraph 3.3. Additionally, a Contractor shall not be entitled to any form of damages or other compensation from Owner by reason of delay or interruptions of its work caused by other contractors or utilities working on the project. Contractor shall indemnify Owner against any and all loss, cost, and damages that the Owner may be caused to sustain by reason of claims from any other contractor working on the Project caused in whole or in part by the acts of the Contractor or those for whom it is responsible

**PAGE 4**

See paragraph 3.3.2

...

The billing period shall be as required herein and as indicated by the specifications. Contactor is required to submit estimated billing by the 28th of each month for the current month. The Contractor must provide a pencil copy for the Architect and Owners review. Contractors' failure to provide estimate billing may delay processing the Application for Payment. Frederick County Public Schools requires overall estimates in compliance with Frederick County Government's funding requirements and in order to obtain funds for Contractor Applications for Payment.

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**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the firsst day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Twenty Fifth (25th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

**PAGE 5**

**.1** Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent ( 5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

**.2** Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent ( 5 %);

**.3** Subtract the aggregate of previous payments made by the Owner; and

**.4** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007 and,

**.5** The requirements of 5.1.8 Reduction or limitation of retainage.

~~**§ 5.1.6.1** The amount of each progress payment shall first include:~~

~~**.1** That portion of the Contract Sum properly allocable to completed Work;~~

~~**.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and~~

~~**.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.~~

~~**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:~~

~~**.1** The aggregate of any amounts previously paid by the Owner;~~

~~**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;~~

~~**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~

~~**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and~~

~~**.5** Retainage withheld pursuant to Section 5.1.7.~~

**§ 5.1.7** Retainage The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

**.1** Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
*(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*

**.2** Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

~~**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:~~

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~~*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*~~

~~**§ 5.1.7.1.1** The following items are not subject to retainage:~~
~~*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*~~

~~**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:~~
~~*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*~~

~~**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~
~~*(Insert any other conditions for release of retainage upon Substantial Completion.)*~~

**§ 5.1.8** ~~If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~Reduction or limitation of retainage, if any, shall be as follows:
*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

Five percent (5%) retainage shall be held from progress payments. After issuance of a Certificate of Substantial Completion for the Contract Work, retainage may be reduced at the Owner's sole and discretion. When the Owner and Architect agree that the work, including all Punch List items, has been satisfactorily completed, the retainage may be reduced at the Owner's sole option to one percent (1%). Any retainage reduction must be approved by the Architect, Owner and Surety prior to submitting an Application for Payment reflecting such reductions and shall include an executed AIA G707A Consent of Surety to reduction in or Partial Release of Retainage or AIA G707 Consent of Surety to Final Payment.

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**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~ Thirty (30) days after the issuance of the Architect's final Certificate for Payment, or as follows:

The Contractor shall deliver to the Owner:

a. Final Releases of Liens and Waiver of Claims from the Contractor; and
b. "As-built or Record Drawings" Plans and Specifications showing all changes, locations and installation shall be submitted to the architect for approval and forwarded to the Owner for his approval and acceptance, "As-built or Record Drawings" shall be provided on a drawing set sealed with the Architect's stamp; and
c. Three (3) complete sets of warranties and guarantees in three-ring binders, indexed with a table of contents approved by the Architect; and
d. A statement from the Contractor that there exist no pending or threatened claims against the Owner relating to the Work or for which the Owner may be liable which are unresolved or a statement of any unresolved issues; and
e. All punch list items shall be satisfactorily completed, each punch list item signed and dated indicating when the correction was completed and inspected by the Owner, Architect and Engineer; and

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f. The Contractor shall deliver to the Owner attesting that various items of Work have been satisfactory completed in accordance with the requirements of the Contract Documents and in accordance with industry standards of workmanship.

~~**§ 5.3 Interest**~~

~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~
~~*(Insert rate of interest agreed upon, if any.)*~~

~~%~~

**PAGE 7**

[ **X** ] Litigation in a court of competent jurisdiction

...

**§ 8.2** ~~The Owner's representative:~~
~~(Name, address, email address, and other information)~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
*(Insert rate of interest agreed upon, if any.)*

0.0 % zero percentage

~~**§ 8.3** The Contractor's representative:~~
~~*(Name, address, email address, and other information)*~~

**§ 8.23**The Owner's representative:
*(Name, address, email address, and other information)*

**§ 8.4** ~~Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.~~The Contractor's representative:
*(Name, address, email address, and other information)*

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~~§ 8.5 Insurance and Bonds~~

~~§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~

~~§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.~~

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

~~§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:~~

~~*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*~~

Other provisions:

§ 8.6.1 The cost of reproducing copies of any additional Construction Documents required for construction shall be at the sole cost of the Contractor.

§ 8.6.2 The Contractor, Subcontractors and all employees shall conform to all Board of Education policies when on Board of Education property, including but not limited to no smoking and the possession of deadly weapons.

§ 8.6.3 The Contractor shall appoint a safety officer who shall be available to the Owner. On a regular basis such safety officer shall inspect the job site for compliance to OSHA and MOSHA requirements. In the event of any job site violations of OSHA or MOSHA, the Contractor shall immediately rectify the situation and bring the job site into compliance.

§ 8.6.4 The Owner may issue a Notice to Contractor for failure to comply with the Contract requirements and/or the Contract Documents. Contractor must respond to such notice as practical, and Owner must receive a written response within two (2) business days of the Contractor's receipt of such notice. Inspections by Owner or the Owner's failure to issue such Notices shall not relieve the Contractor from full compliance with the Contract Documents.

§ 8.6.5 When Work is to be completed during operation of and use of the building Contractor shall ensure all building systems and egress/ingress remain operable and effective during the hours that the school is in use as determined by the Principal. Dividing walls or partitions shall be erected to separate construction and demolition activities from building activities and egress/ingress shall be maintained as stipulated by the relevant Government authorities, including the Fire Marshal.

§ 8.6.6 The Contractor and its Subcontractors shall staff the project with competent and experienced superintendents, foreman, and journeyman. The Electrical contractor must provide a Master Electrician and the Plumbing contractor must provide a Master Plumber to work on the Project. The number of apprentices working on the Project shall not exceed the ratio of two apprentices for every journeyman. If requested, the Contractor shall, within twenty-four (24) hours, provide documentation outlining specific experience for a journeyman, foreman or superintendent.

§ 8.6.7 It is Contractor's sole responsibility to provide utilities, including but not limited to electricity, water, telephone, sewer and gas at the job site during the construction period, notwithstanding the indication of any utilities noted as existing in the Contract Documents.

§ 8.6.8 The Contractor shall promptly make available to the Owner complete copies of all executed Subcontracts and any changes, modifications or exclusions thereto, upon the Owner's request.

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**§ 8.6.9** The Architect or Engineer's approved shop drawings and or samples must be on site before work can begin on the applicable item of Work detailed on the shop drawings or stipulated in the specifications. The Contractor shall make the approved shop drawing available to the Owner's representative as needed to review the installation(s).

**§ 8.6.10** All existing areas, interior and exterior, damaged during construction or renovation, are to be refurbished to their original condition.

**§ 8.6.11** Any soil or excess excavation, including but not limited to rock, which is not required for the finished Work, shall be removed from the site as part of the Contract Sum.

**§ 8.6.12** Notwithstanding any other contract provisions to the contrary, the mechanical system and plumbing system must be completely balances and such balance must be accepted by the Engineer, before the warranty/guarantee period will begin.

**§ 8.6.13** The Contractor shall provide not less than a 2 year warranty for the project, the 2 year warranty shall not diminish any extended warranty provided by equipment manufacturer's not limited to and including all HVAC equipment and Compressors.

**§ 8.6.14** The Contractor and Subcontractors shall conform to all requirements of the following Maryland General Assembly Policies:

.1 Maryland General Assembly House Bill 642 – Children – Child Care Facilities, Public Schools and Nonpublic Schools – Contractors and Subcontractors.

.2 Maryland General Assembly Senate Bill 508 – Children Care Facilities, Public Schools and Nonpublic Schools – Contractors and Subcontractors.

.3 The Contractor and Subcontractors shall not knowingly hire or retain any individual who has been convicted of a crime involving:

1. An offense under 3-307 of the Criminal Law Article;
2. Child sexual abuse under 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under 3-602 of the Criminal Law Article if committed in the State; or
3. A crime of violence as defined in 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of 14-101 of the Criminal Law Article if committed in this State.

**§ 8.7 ~~Other provisions:~~Insurance and Bonds**

**§ 8.7.1** The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.**§ 8.7** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below: *(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 8.8** Other provisions:

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**.2** AIA Document ~~A101™–2017, Exhibit A, Insurance and Bonds~~

~~**.3** AIA Document~~ A201™–2017, General Conditions of the Contract for Construction

~~**.4**~~ **.3** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if required, dated as indicated below:

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~~**.8** Other Exhibits:~~

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~~*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*~~

~~[ ] AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:~~
~~*(Insert the date of the E204-2017 incorporated into this Agreement.)*~~

~~_____~~

~~[ ] The Sustainability Plan:~~

| ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|

~~[ ] Supplementary and other Conditions of the Contract:~~

| ~~Document~~ | ~~Title~~ | ~~Date~~ | ~~Pages~~ |
|---|---|---|---|

~~.9~~ Other ~~8~~ Other documents, if any, listed below:

...

*documents should be listed here only if intended to be part of the Contract Documents.)*

Frederick County Public Schools Bid Documents for this projects Bid.

**ARTICLE 10 INSURANCE AND BONDS**

**10.1** The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.
*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

**10.2** Maryland Code 21-102 - A certificate of authority, or certified copy of a certificate of authority, issued by the Commissioner to a surety insurer shall be accepted as evidence of qualification to become sole surety on a bond, undertaking, recognizance, or other obligation required or allowed by law, or in the charter, ordinances, rules, or regulations of a municipal corporation, board, organization, court, judge, or public officer, without further proof or qualification regarding solvency, credit, or financial sufficiency to act as a surety or bidders may use bonding companies from Treasury approved sureties with an AM Best rating of A- or better rating.

**10.3** The Contractor shall provide a Performance Bond with a Penal Sum equal to the Contract Sum. The Contractor shall provide a Payment Bond with a Penal Sum equal to the Contract Sum. All bonds shall be written on MD COMAR 21 07 02 10 Bond and will be from a surety company acceptable to the Owner.

**10.4** The Contractor shall comply with the additional insurance requirements set forth below:

(a) The Board of Education of Frederick County, Frederick County Council, the State of Maryland and the other entities stipulated by the Owner shall be named as an additional insured for ongoing and completed operations on the Contractor policies other than Worker's Compensation.

(b) All policies shall stipulate the Owner is to receive written notice thirty (30) days before cancellation.
(c) The Owner is to receive insurance certificates evidencing the compliance of insurance requirements at least (10) ten days before Work commences.
(d) All insurance policies shall contain a Waiver of Subrogation in favor of the Owner.
(e) General Liability and Umbrella Insurance policies are to be in "Occurrence Form".
(f) Insurance policies shall provide primary coverage to The Board of Education of Frederick County and The Board of Commissioners of Frederick County and the State of Maryland as additional insureds for loss, injury and damage arising out of or associated with the Work under this agreement as opposed to pro-rate with,

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concurrent with excess to any other insurance coverages by the Owner other than insurance Worker's Compensation Insurance.

(g) The Contractor shall purchase and maintain all insurance from an insurer acceptable to the Owner and lawfully authorized to do business in Maryland.

**10.5** The Owner shall provide and maintain Builder's Risk Protection throughout the project. The Contractor shall pay the cost of any deductible(s) required by the Builders Risk Protection as provided by the Owner. This provision shall not release the contractor of the obligation to complete the work according to plans and specifications required by the contract and shall be obligated to full performance of the contract's undertaking. For projects where Builders Risk coverage is not applicable, the Contractor will insure all tools, equipment, and property to be installed.

**10.6** The Contractor shall provide insurance pursuant to the requirements set forth below:

| **Type of insurance or bond** | **Limit of liability or bond amount ($0.00)** |
|---|---|
| Part 1 Worker's Compensation Insurance | as required by statute |
| Part 2 Employers Liability: | |
| Bodily Injury by Accident | $ 500,000.00 each accident |
| Bodily Injury by Disease | $ 500,000.00 policy limits |
| Bodily Injury by Disease | $ 500,000.00 each employee |
| Commercial General Liability Insurance, to include, premises, products, completed operations, personal injury and contractual: Aggregate to apply Per Project./Per Location | $1,000,000.00 |
| Each Occurrence | $1,000,000.00 |
| General aggregate Limit (Per Site) | $2,000,000.00 aggregate limit |
| Products and complete operation | $1,000,000.00 each occurrence Limit |
| Personal & advertising injury | $1,000,000.00 |
| Fire damage | $ 50,000.00 |
| Medical Expense (Any One Person) | $ 5,000.00 each occurrence |
| General Liability insurance shall provide coverage for: | |
| Completed Operations to meet the Statute of Repose & Statute of Limitations; | |
| Independent Contractors | |
| Contractual Liability | |
| Broad From Property Damage | |
| Liability arising from Explosion, Collapse and Underground Damage (X, C, U) | |
| Additional insured Endorsement providing coverage as required in section 10.4 (a) | |
| Terrorism-Certified & Non Certified | |
| Option (b1) | |
| Automobile Liability Insurance, including owned, non-owned and hired vehicles | $1,000,000.00 each person |
| Bodily injury liability | $1,000,000.00 each occurrence |
| Property damage liability | |
| Option (b2) | $1,000,000.00 each accident |
| Combined single limit Bodily injury or property damage liability | |
| Umbrella Excess Liability (true following form)* | $5,000,000.00 per Occurrence<br>$5,000,000.00 General Aggregate<br>$5,000,000.00 Products & Completed Operations |
| Any construction contractor providing Mass Grading, Masonry, Structural Steel, Superstructure or foundation concrete, Mechanical or Electrical | $8,000,000.00 Each Occurrence<br>$8,000,000.00 General Aggregate<br>$8,000,000.00 Products & Completed |

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| | |
|---|---|
| contractors shall be required to carry the following Umbrella Excess Liability (true following form) minimum limits: | Operations |
| Contractors Pollution Liability for contractors engaged in testing for, monitoring, clean-up, removal, containing, detoxifying, neutralizing, transporting, handling, storage treatment, or disposing of or processing any waste pollutants. | $1,000,000.00 per Occurrence<br>$1,000,000.00 Aggregate |
| *CGL & Umbrella limits can vary, but the combined per Occurrence and Aggregate totals must meet or exceed the required occurrence and aggregate limits specified here | |

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Theresa R. Alban, Ph.D., Superintendent of Schools,
Superintendent of Schools

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:08:19 ET on 02/12/2020 under Order No. 4323301581 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

*(Signed)*

_____

*(Title)*

_____

*(Dated)*

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**User Notes:** (791702393)

# AIA® Document A201™ – 2017

## *General Conditions of the Contract for Construction*

**for the following PROJECT:**
*(Name and location or address)*

New Multi-Classroom Portable Unit
Oakdale Elementary School
5830 Oakdale School Road
Ijamsville, Maryland 21754
Bid 20C10

**THE OWNER:**
*(Name, legal status and address)*

The Board of Education of Frederick County
191 South East Street
Frederick, Maryland 21701-5918

**THE ARCHITECT:**
*(Name, legal status and address)*

N/A

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. As specifically enumerated in the Agreement, the Contract Documents shall include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under the Architect respective professional services agreements with the Owner. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. As the design progresses and payments to the Architect are made by the Owner the instruments of services become the property of The Board of Education of Frederick County, see 1.5.1 Ownership and Use of Drawings, Specifications and Other Instrument of Service.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### § 1.2 Correlation and Intent of the Contract Documents

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by


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one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement
2. Addenda with those or late date having precedence over those of earlier date
3. The Supplementary Conditions
4. The General Conditions of the Contract for Construction
5. The Contract Specifications
6. The Contract Drawings

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors of the respective Instruments of Service, including the Drawings and Specifications, and The Board of Education of Frederick County will own and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and materials or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and material and equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

### § 1.6 Notice

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.


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**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if included in the AIA B101-2009 Standard Form of Agreement Between Owner and Architect, to establish the protocols for the development, use, transmission, and exchange of digital data.

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, if included in AIA B101-2009 Standard Form of Agreement Between Owner and Architect, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The Architect does not have authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

**§**

*(Paragraphs Deleted)*

**2.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Fees for trade and specialty permits, including but not limited to, electrical, plumbing, elevator, fire review(s) and inspection, boiler, pressure vessel and fuel burning permits and all reinspections shall be paid by and at the Contractor's expense.**

**§ 2.1.4** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.1.5** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.1.6** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project which are known to the Owner, and a legal description of the site if requested by the Contractor. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner and shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.1.7** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control


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and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.1.8** Unless otherwise provided in the Contract or Bidding Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**§ 2.2 Owner's Right to Stop the Work**

**§ 2.2.1** If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

**§ 2.2.2**

**If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to or waiver of other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.**

## ARTICLE 3 CONTRACTOR

**§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

**§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor represents that it has received all information it needs concerning the conditions of the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents. Based upon the foregoing inspections, understandings, agreements and acknowledgements, the Contractor agrees and acknowledges that the Contract Sum is just and reasonable compensation for all the Work and that the Work shall not result in any lateral or vertical movement of any structure due to the Contractor's construction activities. The Contractor shall exercise special care in executing Subsurface Work in proximity of subsurface utilities, improvements and easements.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as


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the information furnished by the Owner pursuant to Section 2.1.6, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report in writing to the Architect and Owner any errors, inconsistencies or omissions discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without providing written notice to the Owner and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear the costs for correction.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect in writing any nonconformity discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as state below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.


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**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 3.4.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect or of other Contractors during the performance of the Work or by Tests, inspections or approvals required or performed by persons other than the Contractor, including inspections or approvals performed by the Owner's personnel or by any public authority.**

### § 3.5 Warranty

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** The Minimum Warranty period will be two (2) years from the date of substantial completion of the project. The Warranty shall include extended warranty period(s) available from equipment manufacturers and/or extended warranties as required by project specification are required as if individually enumerated herein.

**§ 3.5.2 Notwithstanding any other contract provisions to the contrary, the mechanical system and plumbing system must be completely balanced and such balance reports must be reviewed and accepted by the Engineer before the warranty/guarantee period will begin.**

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections and reinspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Fees for trade and a specialty permit including, but not limited to, electrical, plumbing, elevator, fire review(s), inspections and reinspections, boiler, pressure vessel and fuel burning permits, shall be paid by and at Contractor's expense.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Compliance with local governing jurisdiction requirements shall be completed at no additional cost to the Owner.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The provisions of this Agreement regarding compensation and damages, including delay damages, shall apply.


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### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent and Project Manager

**§ 3.9.1** The Contractor shall employ a competent superintendent, project manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Communications shall be confirmed in writing. The Superintendent and necessary staff members shall be in attendance at the Project site during the performance of the Work including completion of all Punch List items.

**§ 3.9.2 Prior to being assigned to the Project both the Project Manager and Superintendent shall be subject to the approval of the Owner. Once approved, the Superintendent and Project Manager will not be removed from the Project without the Owner's written consent. The Owner reserves and retains the right, as its sole and absolute discretion, to order the Contractor to replace any of the Contractor's employees. In the event the Owner requests Contractor employee's removal, the Contractor shall promptly replace such employees with competent replacements satisfactory to the Owner. The Contractor shall not change the Superintendent or Project Manager without the Owner's consent.**


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**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

**§ 3.10.1** The Contractor, promptly after being awarded the Contract and as a condition precedent to the first Application For Payment, shall prepare submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor shall prepare a preliminary construction and submittal schedule, within 14 days after being awarded the Contract and complete schedules before 60 contract days have elapsed. The Contractors shall update the schedules thereafter as necessary to maintain current construction and submittal schedules, and shall submit the schedules for the Architect's and Owner's review. The Architect's and Owner's review shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. Contractor's Construction Schedule shall be in a Critical Path Method (CPM) and bar chart format, indicating sufficient detail, task(s) (the work) and duration(s) (start and completion) of each major item of the Work, the current status of each major item of Work indicating staffing and equipment to comply with the Contract Substantial Completion Date and any Owner approved extensions. Contractor's shall provide additional detail when requested by the Architect or Owner and update their Proposed Contractor Schedule to be compliant with the Contract Substantial Date(s). Within 7 days of a request by the Architect or Owner, the Contractor shall furnish to the Owner and Architect a Progress Schedule showing the current progress and the completion stage of the Work as compared to the Original Contract Schedule. Project Schedules shall clearly identify any item of Work, which is behind Schedule along with the Contractor's increased manpower and equipment necessary to comply with the Contract Schedule including any time extensions approved by the Owner. Progress Schedule(s) shall be provided in a Critical Path Method (CPM), bar chart format and electronic as requested by the Owner. During the Owner's review, the Owner may choose to advise the Contractor of work that will be performed by the Owner's forces or the Owner's separate Contractor. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall provide the Owner and Architect updated schedules as a condition precedent to progress payments. The updated schedules shall be provided by the Contractor as the project progresses and as requested by the Owner or Architect.

**§ 3.10.3** The Contractor shall perform the Work in accordance with the most recent schedules reviewed by the Owner and Architect without objections.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Owner may request, and Contractor shall provide, at any time during the course of the Project, Asbuilt Drawings that reflect the then current stage of construction as actually built and submitted to the Owner for its review. If such drawings are not provided, the Owner may withhold progress payment, or at its discretion a portion thereof, until the requested drawings are up to date and provided for the Owner's review.

### § 3.12 Shop Drawings, Product Data and Samples

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.


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**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. The Contractor shall submit shop drawings to the Architect for all structural elements of the Work and all other portions of the work required by the Contract Documents. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.
If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, who signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals provided the Owner and Architect have specified to


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the Contractor all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. Pursuant to the Section 3.12.10, the Architects will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

**§ 3.12.10.1** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages,


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losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder including but not limited to the contributing negligence of such party to be indemnified. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.1.4 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The duties of the Architect shall be governed by the Agreement between the Owner and the Architect, and will review the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents., except as provided in Section 3.3.1. Notwithstanding other provisions in this Agreement to the contrary, for the purpose of effectuating the Architect's duties in this section, the Architect shall be responsible for exercising reasonable care and diligence in observing ongoing Work. No inspection or approval or failure to inspect or approve by the Architect shall relieve the Contractor from complying in all respects with the requirements of the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will report to the Owner and copy the Contractor about the progress and quality of the portion of the Work completed reporting (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§**
**4.2.3.1 Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, for additional services which may be charges by the Architect for additional site visits made necessary by the fault or neglect of the Contractor.**


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**§ 4.2.4 Communications**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of reviewing the adequacy of the structural elements of the building and checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component. Should any local Government authorities require certification or correctness of any structural shop drawings by the Architect of record, the Architect will sign and certify the shop drawings only after the shop drawings have been signed and certified by both the structural engineer and other professional engineer registered in the State of Maryland on behalf of the manufacturer, fabricator, Subcontractor or Contractor. The cost for such additional engineering certification shall be borne by the Contractor.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive, review and forward to the Owner with comments, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10. Architect's inspection and issuance of a certificate for final payment and Owner's payment shall not relieve Contractor of responsibility for defects in the Work.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.


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**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract or propose to contract with a proposed person, entity or subcontractor unless the Contractor is satisfied that such person, entity or Subcontractor is technically and financially qualified to perform the Work as a Subcontractor in accordance with the Contractor Documents. The Contractor shall not Contract with any entity or persons to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

**§ 5.2.5 The Contractor shall not enter into any Subcontract, Contract agreement, purchase order or other arrangement for the furnishing of any portion of the materials, services, equipment or Work with any party or entity as such party or entity is an affiliated entity with which the Contractor has a direct or indirect ownership, control or interest unless such Agreement has been approved by the Owner after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed arrangements.**


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### § 5.3 Subcontractual Relations

By appropriate written agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work which the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

**.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

**.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims a delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.


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**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall be deemed to be subject to the same obligations and rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor agrees that it will incorporate the provisions of Article 7 in its entirety into all agreements with lower tier Contractors. It is further understood and agreed that these Change Order pricing provisions, apply to all types of Contracts, Subcontracts and purchases. The Owner and Owner's accountant shall be afforded access to Contractor's records, books, and correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers and any other data relating to the Project as necessary to verify the cost of any change, including wages and benefits paid, for which compensation is sought under this Agreement.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone. Verbal notification approving the Contractor to proceed with a change in the work shall be confirmed in a written format via, CCD, Change Order, progress minutes, e-mail or other written correspondence and should be made as soon as practical.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive


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or order for a minor change in the Work. A Change Order or Construction Change Directive involving unit costs shall be equitably adjusted in accordance with 7.3.4

**§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

**.1** The change in the Work;

**.2** The amount of the adjustment, if any, in the Contract Sum; and

**.3** The extent of the adjustment, if any, in the Contract Time; and

**.4 Comply with all requirements of 7.2.2 below and 7.3.4.**

No Change Order shall exceed any of the limitations and requirements of the Contract Documents.

**§ 7.2.2** The Contractor shall comply with the following regarding Changes:

(A) A Notice or Request for Change must comply with all of the following:

.1 specifically and in detail describe the nature and cause of the Claim; and

.2 specifically reference the detail(s) on the plans and the specification section(s) that are affected; and

.3 contain an estimate of the increase or decrease in the cost to the Owner; and

.4 include supporting documentation that satisfactorily justifies to the Owner overhead, profit, insurance, sales or payroll taxes and incorporate a detailed quantity survey of all Work added and deleted; and

.5 be submitted in a format acceptable to the Owner.

(B) Additive Changes must comply with the following Mark-Up schedule for Overhead, profit and bond:

If the Cost of the proposed change is $0.00 to $4,999.99, the total combined overhead, profit and bond must not exceed 20%.

If the Cost of the proposed change is $5,000.00 to $14,999.99, the combined overhead, profit and bond must not exceed 15%.

If the Cost of the proposed change is $15,000.00 to $24,999.99, the combined overhead, profit and bond must not exceed 10%.

If the Cost of the proposed change is $25,000.00 to $49,999.99, the combined overhead, profit and bond must not exceed 7%.

If the Cost of the proposed change is over $50,000.00, the combined overhead, profit and bond will be negotiated but will not exceed 5%, the cost of the bond shall be clearly indicated in the detailed proposal regardless of the proposed cost.

(C) The Contractors' markup of Subcontractor Work and supplier's material(s) shall not exceed 7% for changes up to $24,999.99 and the markup shall be negotiated for changes over $25,000.00 but shall not exceed 5% of the Subcontractor(s) cost of the Work.

(D) Overhead cost shall include all the general conditions, expenses, including but not limited to, all coordination, calculations, engineering, field and office supervision, field and office rent utilities, telephone and communications expenses, office supplies, clean-up, debris expenses, administration and preparation. When both additions and deletions are involved in any one change, the allowance for overhead, profit and bond shall be computed on the net increase, if any, with respect to the change.

(E) For decreases in the Work or credits, the Contract Amount shall be decreased 100% of the Scheduled Value of the deleted Work plus overhead, profit and bond. Contractor and Subcontractor(s) credits shall include credit for overhead, profit and Bond, in the same percentages allowed for additive changes in the above mark-up schedule:

(F) The Contractor's total charge to the Owner for the use of equipment owned in whole or in part by the Contractor, its Owners, directors, officers, shareholders, or affiliated or related persons or entities shall consider the rate agreed upon between the Contractor, Owner and Architect at the beginning of the project less operator and fuel. Reference materials such as "the AED Green Book" should be used to establish market rental rates for equipment. The following shall apply;

.1 The appropriate duration of hourly rate shall be calculated based on the entire duration the piece of equipment is on the FCPS site (e.g. if the equipment item has been on the project for 30 days or more the hourly rate shall be the monthly rental divided by 176 hours; if on the project for one week the hourly rental shall be the weekly rental divided by 40; if on the project for a day the hourly rental shall be the daily rental divided by 8; if brought to the project for the specific operation the minimal rental period shall apply.) Minimal rental durations will be considered for equipment rented for specific project purposes,


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.2 The Contractor shall not invoice for delivery or removal of the equipment to or from the job site,

.3 In no event shall the total payment paid by the Owner on any such piece of equipment exceed fifty percent (50%) of its purchase price.

(G) Subcontractor(s) shall comply with the requirements specified above for the Contractor regarding Changes.

**§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

**.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

**.2** Unit prices stated in the Contract Documents or subsequently agreed upon;

**.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

**.4** As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

**.1** Wages for construction Workers, including supervisors directly employed to perform the construction of the Work at the site. Unless otherwise agreed by Addendum to this Contract, labor burden shall be limited to: social security, old age and employment, workmen's compensation, health and life insurance benefits, sick leave, holidays, military leave, vacation and pension and savings plan benefits; insurance, and other employee costs approved by the Architect;

**.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

**.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

**.5** Additional costs of supervision and field office personnel directly attributable to the change, provided, however, the Contractor shall provide an itemized breakdown showing quantities, unit costs, hours and rates of labor, and other costs and such detail as may be required to allow the reasonableness of cost to the established. Similar cost information covering Subcontractors" Work shall be included as part of the Contractor's Proposal. Minimum charges for "handling' will not be acceptable. The allowable overhead and profit mark-ups to be included in the total cost to Owner shall be based on paragraph 7.2 and:

.1 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of the costs including labor, materials, and Subcontractors. Labor and materials shall be itemized in the manner prescribed above. Where major costs items are Subcontracts, they shall be itemized also. In no case will a charge involving over $500.00 be approved without such itemization.

.2 A Change Order must include each of the items listed in this Article 7. In the event that there is no change in the Contract time or Contract amount, it must be noted that no such change is intended. A


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Change Order is all-inclusive, that is, a Change Order, must indicate the change in Contract amount, including any overhead and profit. The Contractor cannot later request additional sums for a prior Change Order because it did not include overhead, profit, or similar items. If additional Contract time is indicated on the Change Order and the Contractor intends to claim any costs for time on any basis, the Change Order must include all additional costs, if any, associated with the additional time.

.3 Where both additions and credits are involved in any one Change Order the allowance of overhead and profit shall be figured on the basis of the net increase, if any.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect and the credit shall be as required by Article 7 mark-up schedule. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change per the mark-up schedule.

**§ 7.3.9** Pending final determination of the actual cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any potion of such costs that remain in dispute, a Claim may be made in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order otherwise, if Contractor is directed to proceed by Owner, the matter shall be considered a Claim under Article 15. Change Orders may be issued for all or any part of a Construction Change Directive.

### § 7.4 Minor Changes in the Work

The Architect with the consent of the Owner has the authority to order minor changes in the work not involving adjustment in the Contract Sum or extension the Contract Time and not inconsistent with intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

## ARTICLE 8 TIME

### § 8.1 Definitions

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement shall be fixed in a Notice to Proceed.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.


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**§ 8.2 Progress and Completion**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and the Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a Separate Contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and with consent of the Owner; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Contractor waives any and all rights to any increased payments for delay damages, whether by Change Order or otherwise, to include overhead, extended overhead, extended general conditions, or for any other delay-based amounts of any kind or nature, for any delay by reason of the events referred to in the subparagraph or any other event of any kind or nature. Contractor's remedy is limited to an extension of time as set forth herein.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

*(Paragraph Deleted)*

**ARTICLE 9 PAYMENTS AND COMPLETION**

**§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Schedule of Values shall be revised from time to time as may be necessary and due to the issuance of Change Orders or Construction Change Directives, the Contractor shall revised the Schedule of Values as requested by the Architect or Owner. The Owner reserves the right to request the Contractor to provide additional detail substantiating the Schedule of Values.

**§ 9.2.2 The Contractor shall include a line item in the Schedule of Values for production of project record documents. The minimum value established for the record documents must not be less than 1/2 % of the total Contract value including accepted alternates.**

**§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such applications shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies


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of requisitions from Subcontractors and material suppliers, and shall reflect retainage as provided for in the Contract Documents. Applications for Payment shall be based upon the Schedule of Values and shall be in a form and content satisfactory to the Owner. Each Application for Payment shall be accompanied by the following:

.1 Contractor's application and Cost Certification Statement, AIA Forms 702, 703 and IAC PSCP Form No. 306.4, with attachment "G" Certified Minority Business Enterprise Participation Standard Monthly Contractor's Requisition for Payment" (current form), and;

.2 A statement from the Contractor that all items of construction for which payment is sought have been incorporated into the Project where properly stored in accordance with the Contract Documents, and;

.3 The Contractors and applicable Subcontractors Release of Liens and Waivers of Claim and such other documents that the Owner may require after discussion with the Contractor, and;

.4 Such other documentation that the Owner, Construction Manager, Architect may reasonably require after discussion with contractor.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

### § 9.4 Certificates for Payment

**§ 9.4.1** The Architect will, after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor for such amount as the Architect determines in properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certifications in whole or in part as provided by in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to


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substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a Separate Contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When above reasons for withholding certifications are removed, certification will be made for amounts previously withheld after the Contractor revises and resubmits a current Application for Payment including such amounts that were previously withheld.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on its next Certificate for Payment.

**§ 9.5.5 If the Contractor disputes any determination by the Architect or Owner with regard to any Applications for Payment, the Contractor shall nevertheless expeditiously continue to perform the Work and shall make claim as provided in Article 15.**

**§ 9.5.6 The Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Architect has approved the Owner's action, or the Work for which payment is being withheld has been rejected by any governmental authority.**

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.


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**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

Subject to other provisions in the Contract Documents, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within thirty days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's substantiated direct costs of shut-down. Article 9.7 shall not apply to Change Orders that have not received formal approval by the Board of Education of Frederick County, all such Change Orders shall not be included in Applications for Payment until the Contractor received formal notification from the Owner that the Change Order has received formal approval by the Board of Education of Frederick County and the Contractor has completed the Change Order work.

### § 9.8 Substantial Completion

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** The comprehensive list of items to be completed or corrected ("Contractor's Punch List") prepared by the Contractor shall be submitted to the Owner and the Architect and the Owner shall be notified of inspections and be


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entitled to have an Owner's representative present at such inspections. All items that are disclosed during inspections not complying with the Contract Documents shall be added to the Contractor's Punch List and a copy of the Amended Punch List shall be submitted to the Owner and the Contractor. Any Certificate of Substantial Completion shall then be submitted making reference to the Punch List item, as either being completed to the Architect's satisfaction or shall fix a time within which the Contractor shall complete any remaining items. In the event the Contractor's Punch List is not completed by the date set forth in the Certificate of Substantial Completion, Owner has the option of deducting from balances due the Contractor an amount sufficient to compensate Owner for the cost of completing the Punch List. The amount to be deducted shall be determined in the sole discretion of Owner. Alternatively, Owner at its sole discretion may proceed to engage another Contractor to complete the Punch List Work with the cost thereof to include Owner's administrative costs, which costs shall be calculated in the sole discretion of the Owner, to be deducted from the amount retained and if the amount retained is insufficient, the Contractor is responsible to reimburse Owner the full amount of the uncovered cost. To the extent that multiple inspections may be required to determine whether the Work, or a designated portion thereof has attained Substantial Completion, the Owner shall be entitled to deduct from the Contract Sum any amounts which it must pay to the Architect for additional services for such additional inspections.

**§ 9.8.4** When the Work or designated portion thereof including Record Documents and Maintenance Manuals are substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work provided the Contractor has completed all other contractual requirement stipulated to begin the warranty periord or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 9.9 Partial Occupancy or Use

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information


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and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither retainage payments nor final payment shall become due until all documents required by the Contract Documents and Article 5 of AIA 101 Standard Form of Agreement Between Owner and Contractor including all (a) Maintenance Manuals, (b) Record Documents, (c) Instruction and Demonstrations have been provided and the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days, prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and, (5) other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorney fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.


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**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice and exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.4.1** If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner and shall defend, indemnify, and hold Owner and Architect harmless from and against all claims, liabilities, suits, losses and damages arising out of or relating to such materials.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect


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will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation


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or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.


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**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**
The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

**§11.5 Adjustment and Settlement of Insured Loss**
**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

**§ 12.1 Uncovering of Work**
**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs. The cost to repair nonconforming work shall be considered a latent defect and the contractor responsible for the work or as appropriate the damage to the work shall be responsible for the cost to make repairs to said work and return the uncovered work to the condition before the work was uncovered.

**§ 12.2 Correction of Work**
**§ 12.2.1 Before Substantial Completion**
The Contractor and its surety shall have the right to remedy any defects in the Work on materials which shall appear within a period of two (2) year from the date of Substantial Completion. Upon written notice from the Owner, the Contractor and surety shall promptly provide said remedy after notice from the Owner. If said remedy is not promptly provided, the Owner shall have the right to correct said defects and charge the Contractor and its surety for the same.

**§ 12.2.2 After Substantial Completion**
**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within two-years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously


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given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within five working days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. If the Contractor does not proceed with correction of such nonconforming Work within five working days fixed by written notice from the Architect the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within three days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Owner's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.2.2** The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The two-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### § 13.2.2 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or


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certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

**§ 13.3 Rights and Remedies**

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

**§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.4.7** No tests or inspections or results thereof shall constitute an acceptance of any Work not conforming to the requirements of Contract Documents.

**§ 13.5 Interest**

**§ 13.5.1** Interest payments will not be required for late payments under the terms of this Contract.

**§ 13.6 TIME LIMITS ON CLAIMS**

**§ 13.6.1** Commencement of Statutory Limitations Period and Statute of Repose shall be in accordance with the laws of the State of Maryland.


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## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

**.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

**.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

**.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

*(Paragraph Deleted)*

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment as set forth in the provisions of this Agreement regarding termination by the Owner for convenience.

### § 14.2 Termination by the Owner for Cause

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

**.1** refuses or fails to supply enough properly skilled workers or proper materials;

**.2** fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

**.3** disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

**.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

**.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

**.2** Accept assignment of subcontracts pursuant to Section 5.4; and

**.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.


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**§ 14.2.5** In the event that is adjusted that the Owner's termination for cause is not justified, then the Termination shall be deemed to be a termination by the Owner for convenience and the Contractor shall be entitled to compensation as only set forth in the provisions of this Agreement regarding termination by Owner for Convenience.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

**.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

**.2** that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. At its option the Owner may terminate this Contract in whole or from time to time in part at any time by written notice thereof to the Contractor. Upon any such termination, Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, Owner shall pay Contractor in accordance with 14.4.2 below. The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not confirming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice direct otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no further orders or subcontracts for materials, equipment, services, or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plans and equipment on the Site or in transit thereto. Upon such termination, the obligations of the Contractor shall continue as to portions of the Work already performed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

**.1** cease operations as directed by the Owner in the notice;

**.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

**.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** Upon Termination for Convenience, the provisions of the Contract, which by their nature, survive any final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not conforming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice directs otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no future orders or Subcontracts for materials, equipment, services or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or Subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plant and equipment on the site or in transit thereto. Upon termination, Contractor shall be entitled to be paid the full cost of all Work properly done by Contractor on account of the portion of Work Performed. If at the date of such termination, Contractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Work, and if Contractor delivers such goods to the Site or to such other place as the Owner shall reasonably direct, then Contractor shall be paid for such goods or materials. No other payment shall be made by reason of damages or otherwise, including but not limited to loss of anticipated profits, overhead, or any other claim or amount whatsoever.


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## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

**§ 15.1.3.** Claims by the Contractor must be made by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by Contractor must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Contractor claim(s) shall not be valid unless made in strict accordance with this subparagraph.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. A Claim must be processed as defined herein, Article 15 and comply with all requirements of Article 7.

#### § 15.1.6 Claims for Additional Time

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. No claim for delay damages of any kind or nature shall be valid and no such damages shall be paid by the Owner except upon Owner's written consent which consent is in the sole and absolute discretion of the Owner. No written consent by Owner to damages for one period of delay, entitle Contractor to damages for any other period of delay. A Claim for additional time must be for adverse weather conditions and the actual conditions must exceed the cumulative monthly adverse weather day totals indicated in 15.1.5.2.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, the time must exceed the time as defined in the schedule below, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, exceeded the schedule below and could not have been reasonably anticipated


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and had an adverse effect on the scheduled construction. The State of Maryland, Department of General Services, Special Provisions Section of Hagerstown, Maryland will be used in the calculation of the monthly anticipated adverse weather delays. The monthly-anticipated adverse weather delays are as follows, in workdays. The Contractor's schedule must reflect these anticipated adverse weather delay days in weather dependent activities:

| Jan | Feb | March | April | May | June | July | Aug | Sept | Oct | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 8 | 7 | 7 | 8 | 8 | 7 | 5 | 6 | 4 | 6 | 5 | 5 |

In any event, Contractor's Claim(s) for delay in the performance of the Work due to adverse weather conditions is strictly limited to a Claim for additional for additional time only. In no event shall the Contractor be entitled to monetary damages or any other compensation as a result of a delay in the performance of the Work due to adverse weather conditions.

**§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim . Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision


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Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be subject to mediation and, if the parties fail to resolve their dispute through mediation the claim shall be resolved by litigation.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue litigation with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

**§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 15.4 Arbitration**

**§ 15.4.1** All disputes and other matters in question between the parties to this Agreement which cannot be resolved by the parties in accordance with the terms of this Agreement shall be referred to legal counsel and resolved in the Circuit Court for Frederick County, Maryland and all parties hereto agree to submit themselves to the jurisdiction of that Court. During any legal proceedings or other dispute resolution proceedings which may be
agreed to between the parties, Owner and Contractor shall
*(Paragraph Deleted)*

comply with sub-paragraph 4.74.


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**PAGE 1**

New Multi-Classroom Portable Unit
Oakdale Elementary School
5830 Oakdale School Road
Ijamsville, Maryland 21754
Bid 20C10

...

The Board of Education of Frederick County
191 South East Street
Frederick, Maryland 21701-5918

...

N/A

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**ARTICLE 1 GENERAL PROVISIONS**

...

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless~~ As specifically enumerated in the Agreement, the Contract Documents ~~do not~~ shall include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

...

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under ~~their respective professional services agreements.~~ the Architect respective professional services agreements with the Owner. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. As the design progresses and payments to the Architect are made by the

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Owner the instruments of services become the property of The Board of Education of Frederick County, see 1.5.1 Ownership and Use of Drawings, Specifications and Other Instrument of Service.

...

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section ~~15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~15.2 and certify termination of the Agreement under Section 14.2.2.

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**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement
2. Addenda with those or late date having precedence over those of earlier date
3. The Supplementary Conditions
4. The General Conditions of the Contract for Construction
5. The Contract Specifications
6. The Contract Drawings

...

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors ~~and owners of their~~ of the respective Instruments of Service, including the Drawings and Specifications, and The Board of Education of Frederick County will own and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and materials or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

...

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and material and equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the ~~Owner, Architect, and the Architect's consultants.~~Owner.

**PAGE 12**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if included in the AIA B101-2009 Standard Form of Agreement Between Owner and Architect, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

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Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, if included in AIA B101-2009 Standard Form of Agreement Between Owner and Architect, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. ~~Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~The Architect does not have authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

...

**§ ~~2.2 Evidence of the Owner's Financial Arrangements~~**

...

**§ ~~2.2.1~~** ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

...

**§ ~~2.2.2~~** ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

...

**§ ~~2.2.3~~** ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

...

**§ ~~2.2.4~~** ~~Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is~~

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~~required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

...

~~**§ 2.3 Information and Services Required of the Owner**~~

...

**~~§ 2.3.1~~ 2.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing ~~facilities.~~facilities. Fees for trade and specialty permits, including but not limited to, electrical, plumbing, elevator, fire review(s) and inspection, boiler, pressure vessel and fuel burning permits and all reinspections shall be paid by and at the Contractor's expense.**

...

**§ ~~2.3.2~~ 2.1.4** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

...

**§ ~~2.3.3~~ 2.1.5** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

...

**§ ~~2.3.4~~ 2.1.6** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the ~~Project,~~ Project which are known to the Owner, and a legal description of the ~~site.~~ site if requested by the Contractor. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner ~~but~~ and shall exercise proper precautions relating to the safe performance of the Work.

**PAGE 13**

**§ ~~2.3.5~~ 2.1.7** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

...

**§ ~~2.3.6~~ 2.1.8** Unless otherwise provided in the Contract or Bidding Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

...

**§ ~~2.4~~ 2.2 Owner's Right to Stop the Work**

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...

§ 2.2.1 If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

...

~~§ 2.5 Owner's Right to Carry Out the Work~~

...

2.2.2

...

**If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to or waiver of other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.**

...

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become ~~generally~~ familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor represents that it has received all information it needs concerning the conditions of the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents. Based upon the foregoing inspections, understandings, agreements and acknowledgements, the Contractor agrees and acknowledges that the Contract Sum is just and reasonable compensation for all the Work and that the Work shall not result in any lateral or vertical movement of any structure due to the Contractor's construction activities. The Contractor shall exercise special care in executing Subsurface Work in proximity of subsurface utilities, improvements and easements.

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**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section ~~2.3.4,~~ 2.1.6, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These

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obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report in writing to the Architect and Owner any errors, inconsistencies or omissions discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without providing written notice to the Owner and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear the costs for correction.

...

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect in writing any nonconformity discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require.

...

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the ~~Contract.~~ Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof ~~and shall be~~ and, except as state below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**PAGE 15**

**§ 3.4.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect or of other Contractors during the performance of the Work or by Tests, inspections or approvals required or performed by persons other than the Contractor, including inspections or approvals performed by the Owner's personnel or by any public authority.**

...

**§ 3.5.2** ~~All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable~~ The Minimum Warranty period will be two (2) years from the date of substantial completion of the project. The Warranty shall include extended warranty period(s) available from equipment manufacturers and/or extended warranties as required by project specification are required as if individually enumerated herein.

...

~~**to the** Owner, **and** shall commence in accordance with Section 9.8.4.~~**§ 3.5.2 Notwithstanding any other contract provisions to the contrary, the mechanical system and plumbing system must be completely balanced and**

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**such balance reports must be reviewed and accepted by the Engineer before the warranty/guarantee period will begin.**

...

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections and reinspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Fees for trade and a specialty permit including, but not limited to, electrical, plumbing, elevator, fire review(s), inspections and reinspections, boiler, pressure vessel and fuel burning permits, shall be paid by and at Contractor's expense.

...

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Compliance with local governing jurisdiction requirements shall be completed at no additional cost to the Owner.

...

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The provisions of this Agreement regarding compensation and damages, including delay damages, shall apply.

**PAGE 16**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and ~~Contractor,~~ Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

...

**§ 3.9 Superintendent and Project Manager**

...

**§ 3.9.1** The Contractor shall employ a competent ~~superintendent~~ superintendent, project manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Communications shall be confirmed in writing. The Superintendent and necessary staff members shall be in attendance at the Project site during the performance of the Work including completion of all Punch List items.

...

**§ 3.9.2** ~~The Contractor, as soon as practicable after award of **the** Contract, shall notify **the** Owner **and** Architect of **the** name and qualifications of a proposed superintendent. Within 14 days of receipt **of the** information, **the**~~

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~~Architect may notify **the** Contractor, stating whether **the Owner** or **the** Architect (1) has reasonable objection **to the** proposed superintendent or (2) requires additional time for review. Failure **of the** Architect **to** provide notice within **the** 14-day period **shall** constitute notice of no reasonable objection.~~**Prior to being assigned to the Project both the Project Manager and Superintendent shall be subject to the approval of the Owner. Once approved, the Superintendent and Project Manager will not be removed from the Project without the Owner's written consent. The Owner reserves and retains the right, as its sole and absolute discretion, to order the Contractor to replace any of the Contractor's employees. In the event the Owner requests Contractor employee's removal, the Contractor shall promptly replace such employees with competent replacements satisfactory to the Owner. The Contractor shall not change the Superintendent or Project Manager without the Owner's consent.**

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**§ 3.10.1** The Contractor, promptly after being awarded the ~~Contract, shall~~ Contract and as a condition precedent to the first Application For Payment, shall prepare submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

...

**§ 3.10.2** The ~~Contractor, promptly~~ Contractor shall prepare a preliminary construction and submittal schedule, within 14 days after being awarded the Contract and ~~thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably~~ complete schedules before 60 contract days have elapsed. The Contractors shall update the schedules thereafter as necessary to maintain current construction and submittal schedules, and shall submit the schedules for the Architect's and Owner's review. The Architect's and Owner's review shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. ~~If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved~~ Contractor's Construction Schedule shall be in a Critical Path Method (CPM) and bar chart format, indicating sufficient detail, task(s) (the work) and duration(s) (start and completion) of each major item of the Work, the current status of each major item of Work indicating staffing and equipment to comply with the Contract Substantial Completion Date and any Owner approved extensions. Contractor's shall provide additional detail when requested by the Architect or Owner and update their Proposed Contractor Schedule to be compliant with the Contract Substantial Date(s). Within 7 days of a request by the Architect or Owner, the Contractor shall furnish to the Owner and Architect a Progress Schedule showing the current progress and the completion stage of the Work as compared to the Original Contract Schedule. Project Schedules shall clearly identify any item of Work, which is behind Schedule along with the Contractor's increased manpower and equipment necessary to comply with the Contract Schedule including any time extensions approved by the Owner. Progress Schedule(s) shall be provided in a Critical Path Method (CPM), bar chart format and electronic as requested by the Owner. During the Owner's review, the Owner may choose to advise the Contractor of work that will be performed by the Owner's forces or the Owner's separate Contractor. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall provide the Owner and Architect updated schedules as a condition precedent to progress payments. The updated schedules shall be provided by the Contractor as the project progresses and as requested by the Owner or Architect.

...

**§ 3.10.3** The Contractor shall perform the Work in ~~general~~ accordance with the most recent schedules ~~submitted to the Owner and Architect.~~reviewed by the Owner and Architect without objections.

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...

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be ~~in electronic form or paper copy,~~ available to the Architect ~~and Owner,~~ and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Owner may request, and Contractor shall provide, at any time during the course of the Project, Asbuilt Drawings that reflect the then current stage of construction as actually built and submitted to the Owner for its review. If such drawings are not provided, the Owner may withhold progress payment, or at its discretion a portion thereof, until the requested drawings are up to date and provided for the Owner's review.

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**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate ~~how~~ the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. The Contractor shall submit shop drawings to the Architect for all structural elements of the Work and all other portions of the work required by the Contract Documents. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

...

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**PAGE 19**

**~~§ 3.12.10.1~~** If professional design services or certifications by a design professional related to systems, ~~materials,~~ materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and ~~the~~ Architect will specify all performance and design criteria that such services must satisfy. ~~The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents.~~ The Contractor shall cause such services or certifications to be provided by ~~an appropriately licensed design professional, whose~~ a properly licensed design professional, who signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop ~~Drawings,~~ Drawings and other submittals prepared by such professional. Shop ~~Drawings,~~ Drawings and other submittals related to the ~~Work,~~ Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and ~~the~~ Architect shall be entitled to rely upon the ~~adequacy and accuracy of the services, certifications,~~ adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design ~~professionals,~~ professionals provided the Owner and Architect have specified to the Contractor ~~the~~ all performance and design criteria that such services must satisfy. ~~Pursuant to this Section 3.12.10, the Architect will review and~~ The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. Pursuant to the Section 3.12.10, the Architects will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed

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in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

...

**§ ~~3.12.10.2~~ 3.12.10.1** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

...

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, ~~its~~ the Contractor's consent to cutting or otherwise altering the Work.

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**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified ~~hereunder.~~ hereunder including but not limited to the contributing negligence of such party to be indemnified. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section ~~2.3.2~~ 2.1.4 and identified as such in the Agreement.

...

**§ 4.2.2** The ~~Architect will visit~~ duties of the Architect shall be governed by the Agreement between the Owner and the Architect, and will review the site at intervals appropriate to the stage of ~~construction, or as otherwise agreed with the Owner,~~ construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. ~~However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.~~ The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents., except as provided in Section 3.3.1. Notwithstanding other provisions in this Agreement to the contrary, for the purpose of effectuating the Architect's duties in this section, the Architect shall be responsible for exercising reasonable care and diligence in observing ongoing Work. No inspection or approval or failure to inspect or approve by the Architect shall relieve the Contractor from complying in all respects with the requirements of the Contract Documents.

...

**§ 4.2.3** On the basis of the site visits, the Architect will ~~keep the Owner reasonably informed~~ report to the Owner and copy the Contractor about the progress and quality of the portion of the Work ~~completed, and promptly report to the~~

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~~Owner~~ completed reporting (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

§ ~~4.2.4 Communications~~

...

~~The **Owner** and Contractor **shall** include **the** Architect in all communications that relate **to** or affect **the** Architect's **services** or professional responsibilities. The Owner shall promptly notify **the Architect of the** substance of any~~
**4.2.3.1 Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, for additional services which may be charges by the Architect for additional site visits made necessary by the fault or neglect of the Contractor.**

**PAGE 21**

**§ 4.2.4 Communications**

...

~~direct communications between the Owner and the Contractor otherwise relating to the Project.~~ Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

...

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

...

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of reviewing the adequacy of the structural elements of the building and checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions ~~or~~ or, unless otherwise specifically

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stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's ~~approval~~ review of a specific item shall not indicate approval of an assembly of which the item is a component. Should any local Government authorities require certification or correctness of any structural shop drawings by the Architect of record, the Architect will sign and certify the shop drawings only after the shop drawings have been signed and certified by both the structural engineer and other professional engineer registered in the State of Maryland on behalf of the manufacturer, fabricator, Subcontractor or Contractor. The cost for such additional engineering certification shall be borne by the Contractor.

...

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; ~~receive~~ receive, review and forward to the ~~Owner,~~ Owner with comments, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10. Architect's inspection and issuance of a certificate for final payment and Owner's payment shall not relieve Contractor of responsibility for defects in the Work.

...

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The ~~Owner shall notify the Contractor of any change in the~~ duties, responsibilities and limitations of authority of ~~the Project representatives.~~such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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**§ 5.2.1** Unless otherwise stated in the Contract ~~Documents,~~ Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall ~~notify the Owner and Architect~~ furnish in writing to the Owner through the Architect the names of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

...

**§ 5.2.2** The Contractor shall not ~~contract with a proposed person or entity~~ contract or propose to contract with a proposed person, entity or subcontractor unless the Contractor is satisfied that such person, entity or Subcontractor is technically and financially qualified to perform the Work as a Subcontractor in accordance with the Contractor Documents. The Contractor shall not Contract with any entity or persons to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

...

**§ 5.2.5 The Contractor shall not enter into any Subcontract, Contract agreement, purchase order or other arrangement for the furnishing of any portion of the materials, services, equipment or Work with any party or entity as such party or entity is an affiliated entity with which the Contractor has a direct or indirect ownership, control or interest unless such Agreement has been approved by the Owner after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed arrangements.**

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By appropriate written agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by

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terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work ~~that~~ which the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

...

**§ 6.1.1** The ~~term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The~~ Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and ~~with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract~~ to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims a delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall ~~have~~ be deemed to be subject to the same obligations and rights that apply to the Contractor ~~has~~ under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

...

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly ~~notify the Architect of~~ report to the Architect and Owner apparent discrepancies or defects in ~~the~~ such other construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

...

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor agrees that it will incorporate the provisions of Article 7 in its entirety into all agreements with lower tier Contractors. It is further understood and agreed that these Change Order pricing provisions, apply to all types of Contracts, Subcontracts and purchases. The Owner and Owner's accountant shall be afforded access to Contractor's records, books, and correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers and any other data relating to the Project as necessary to verify the cost of any change, including wages and benefits paid, for which compensation is sought under this Agreement.

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...

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone. Verbal notification approving the Contractor to proceed with a change in the work shall be confirmed in a written format via, CCD, Change Order, progress minutes, e-mail or other written correspondence and should be made as soon as practical.

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§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract ~~Documents. The Contractor shall proceed promptly with changes in the Work,~~ Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change ~~Directive,~~ Directive or order for a minor change in the Work. A Change Order or Construction Change Directive involving unit costs shall be equitably adjusted in accordance with 7.3.4

...

.3 The extent of the adjustment, if any, in the Contract ~~Time.~~Time; and

...

**.4 Comply with all requirements of 7.2.2 below and 7.3.4.**

...

No Change Order shall exceed any of the limitations and requirements of the Contract Documents.

...

§ 7.2.2 The Contractor shall comply with the following regarding Changes:

...

(A) A Notice or Request for Change must comply with all of the following:

...

.1 specifically and in detail describe the nature and cause of the Claim; and

...

.2 specifically reference the detail(s) on the plans and the specification section(s) that are affected; and

...

.3 contain an estimate of the increase or decrease in the cost to the Owner; and

...

.4 include supporting documentation that satisfactorily justifies to the Owner overhead, profit, insurance, sales or payroll taxes and incorporate a detailed quantity survey of all Work added and deleted; and

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...

.5 be submitted in a format acceptable to the Owner.

...

(B) Additive Changes must comply with the following Mark-Up schedule for Overhead, profit and bond:

...

If the Cost of the proposed change is $0.00 to $4,999.99, the total combined overhead, profit and bond must not exceed 20%.

...

If the Cost of the proposed change is $5,000.00 to $14,999.99, the combined overhead, profit and bond must not exceed 15%.

...

If the Cost of the proposed change is $15,000.00 to $24,999.99, the combined overhead, profit and bond must not exceed 10%.

...

If the Cost of the proposed change is $25,000.00 to $49,999.99, the combined overhead, profit and bond must not exceed 7%.

...

If the Cost of the proposed change is over $50,000.00, the combined overhead, profit and bond will be negotiated but will not exceed 5%, the cost of the bond shall be clearly indicated in the detailed proposal regardless of the proposed cost.

...

(C) The Contractors' markup of Subcontractor Work and supplier's material(s) shall not exceed 7% for changes up to $24,999.99 and the markup shall be negotiated for changes over $25,000.00 but shall not exceed 5% of the Subcontractor(s) cost of the Work.

...

(D) Overhead cost shall include all the general conditions, expenses, including but not limited to, all coordination, calculations, engineering, field and office supervision, field and office rent utilities, telephone and communications expenses, office supplies, clean-up, debris expenses, administration and preparation. When both additions and deletions are involved in any one change, the allowance for overhead, profit and bond shall be computed on the net increase, if any, with respect to the change.

...

(E) For decreases in the Work or credits, the Contract Amount shall be decreased 100% of the Scheduled Value of the deleted Work plus overhead, profit and bond. Contractor and Subcontractor(s) credits shall include credit for overhead, profit and Bond, in the same percentages allowed for additive changes in the above mark-up schedule:

...

(F) The Contractor's total charge to the Owner for the use of equipment owned in whole or in part by the Contractor,

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its Owners, directors, officers, shareholders, or affiliated or related persons or entities shall consider the rate agreed upon between the Contractor, Owner and Architect at the beginning of the project less operator and fuel. Reference materials such as "the AED Green Book" should be used to establish market rental rates for equipment. The following shall apply;

...

.1 The appropriate duration of hourly rate shall be calculated based on the entire duration the piece of equipment is on the FCPS site (e.g. if the equipment item has been on the project for 30 days or more the hourly rate shall be the monthly rental divided by 176 hours; if on the project for one week the hourly rental shall be the weekly rental divided by 40; if on the project for a day the hourly rental shall be the daily rental divided by 8; if brought to the project for the specific operation the minimal rental period shall apply.) Minimal rental durations will be considered for equipment rented for specific project purposes,

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.2 The Contractor shall not invoice for delivery or removal of the equipment to or from the job site,

...

.3 In no event shall the total payment paid by the Owner on any such piece of equipment exceed fifty percent (50%) of its purchase price.

...

(G) Subcontractor(s) shall comply with the requirements specified above for the Contractor regarding Changes.

...

**.1** ~~Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation~~ Wages for construction Workers, including supervisors directly employed to perform the construction of the Work at the site. Unless otherwise agreed by Addendum to this Contract, labor burden shall be limited to: social security, old age and employment, workmen's compensation, health and life insurance benefits, sick leave, holidays, military leave, vacation and pension and savings plan benefits; insurance, and other employee costs approved by the Architect;

...

**.5** ~~Costs~~ Additional costs of supervision and field office personnel directly attributable to the ~~change.~~change, provided, however, the Contractor shall provide an itemized breakdown showing quantities, unit costs, hours and rates of labor, and other costs and such detail as may be required to allow the reasonableness of cost to the established. Similar cost information covering Subcontractors" Work shall be included as part of the Contractor's Proposal. Minimum charges for "handling' will not be acceptable. The allowable overhead and profit mark-ups to be included in the total cost to Owner shall be based on paragraph 7.2 and:

...

.1 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of the costs including labor, materials, and Subcontractors. Labor and materials shall be itemized in the manner prescribed above. Where major costs items are Subcontracts, they shall be itemized also. In no case will a charge involving over $500.00 be approved without such itemization.

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.2 A Change Order must include each of the items listed in this Article 7. In the event that there is no change in the Contract time or Contract amount, it must be noted that no such change is intended. A Change Order is all-inclusive, that is, a Change Order, must indicate the change in Contract amount, including any overhead and profit. The Contractor cannot later request additional sums for a prior Change Order because it did not include overhead, profit, or similar items. If additional Contract time is indicated on the Change Order and the Contractor intends to claim any costs for time on any basis, the Change Order must include all additional costs, if any, associated with the additional time.

...

.3 Where both additions and credits are involved in any one Change Order the allowance of overhead and profit shall be figured on the basis of the net increase, if any.

...

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect.~~ Architect and the credit shall be as required by Article 7 mark-up schedule. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that ~~change.~~change per the mark-up schedule.

...

**§ 7.3.9** Pending final determination of the ~~total~~ actual cost of a Construction Change Directive to the Owner, ~~the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim~~ amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any potion of such costs that remain in dispute, a Claim may be made in accordance with Article 15.

...

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change ~~Order.~~ Order otherwise, if Contractor is directed to proceed by Owner, the matter shall be considered a Claim under Article 15. Change Orders may be issued for all or any part of a Construction Change Directive.

...

The Architect ~~may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an~~ with the consent of the Owner has the authority to order minor changes in the work not involving adjustment in the Contract Sum or ~~an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.~~extension the Contract Time and not inconsistent with intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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**§ 8.1.2** The date of commencement of the Work is the date established in the ~~Agreement.~~Agreement shall be fixed in a Notice to Proceed.

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**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, ~~commence the Work~~ prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and the Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

...

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by ~~(1)~~ an act or neglect of the Owner or Architect, or of an employee of either, or of a Separate ~~Contractor; (2)~~ Contractor employed by the Owner; or by changes ordered in the Work; ~~(3)~~ or by labor disputes, fire, unusual delay in deliveries, unavoidable ~~casualties, adverse weather conditions documented in accordance with Section 15.1.6.2,~~ casualties or other causes beyond the Contractor's control; ~~(4)~~ or by delay authorized by the Owner pending mediation and ~~binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines,~~ with consent of the Owner; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Contractor waives any and all rights to any increased payments for delay damages, whether by Change Order or otherwise, to include overhead, extended overhead, extended general conditions, or for any other delay-based amounts of any kind or nature, for any delay by reason of the events referred to in the subparagraph or any other event of any kind or nature. Contractor's remedy is limited to an extension of time as set forth herein.

...

~~**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~

...

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the ~~Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by~~ Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. ~~Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect,~~ The Schedule of Values shall be revised from time to time as may be necessary and due to the issuance of Change Orders or Construction Change Directives, the Contractor shall revised the Schedule of Values as requested by the Architect or Owner. The Owner reserves the right to request the Contractor to provide additional detail substantiating the Schedule of Values.

...

~~**shall** be used as **a** basis **for** reviewing **the** Contractor's subsequent Applications for Payment.~~**§ 9.2.2 The Contractor shall include a line item in the Schedule of Values for production of project record documents. The minimum value established for the record documents must not be less than 1/2 % of the total Contract value including accepted alternates.**

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**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. ~~The application shall be notarized, if required, and supported by all~~ Such applications shall be notarized and supported by such data substantiating the Contractor's right to payment ~~that~~ as the Owner or Architect may require, such as copies of ~~requisitions, and releases and waivers of liens from Subcontractors and~~ requisitions from Subcontractors and material suppliers, and shall reflect retainage ~~if~~ as provided for in the Contract Documents. Applications for Payment shall be based upon the Schedule of Values and shall be in a form and content satisfactory to the Owner. Each Application for Payment shall be accompanied by the following:

...

.1 Contractor's application and Cost Certification Statement, AIA Forms 702, 703 and IAC PSCP Form No. 306.4, with attachment "G" Certified Minority Business Enterprise Participation Standard Monthly Contractor's Requisition for Payment" (current form), and;

...

.2 A statement from the Contractor that all items of construction for which payment is sought have been incorporated into the Project where properly stored in accordance with the Contract Documents, and;

...

.3 The Contractors and applicable Subcontractors Release of Liens and Waivers of Claim and such other documents that the Owner may require after discussion with the Contractor, and;

...

.4 Such other documentation that the Owner, Construction Manager, Architect may reasonably require after discussion with contractor.

...

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

...

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities ~~that~~ making a claim by reason of having provided labor, materials, and equipment relating to the Work.

...

**§ 9.4.1** The Architect will, ~~within seven days~~ after receipt of the Contractor's Application for Payment, either ~~(1)~~ issue to the Owner a Certificate ~~for Payment in the full amount of the Application~~ for Payment, with a copy to the ~~Contractor; or (2) issue to the Owner a Certificate for Payment~~ Contractor for such amount as the Architect determines ~~is properly due, and~~ in properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding ~~certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided~~ certifications in whole or in part as provided by in Section 9.5.1.

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**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

...

**§ 9.5.2** When ~~either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.~~above reasons for withholding certifications are removed, certification will be made for amounts previously withheld after the Contractor revises and resubmits a current Application for Payment including such amounts that were previously withheld.

...

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or ~~supplier~~ material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the ~~Contractor shall~~ Architect will reflect such payment on its next ~~Application~~ Certificate for Payment.

...

**§ 9.5.5 If the Contractor disputes any determination by the Architect or Owner with regard to any Applications for Payment, the Contractor shall nevertheless expeditiously continue to perform the Work and shall make claim as provided in Article 15.**

...

**§ 9.5.6 The Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Architect has approved the Owner's action, or the Work for which payment is being withheld has been rejected by any governmental authority.**

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**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

...

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors ~~or provided by~~ and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

...

~~If~ Subject to other provisions in the Contract Documents, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within ~~seven~~ thirty days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven~~ thirty days after the date established in the Contract Documents, the amount certified by the ~~Architect or awarded by binding dispute resolution,~~ Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's ~~reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~substantiated direct costs of shut-down. Article 9.7 shall not apply to Change Orders that have not received formal approval by the Board of Education of Frederick County, all such Change Orders shall not be included in Applications for Payment until the Contractor received formal notification from the Owner that the Change Order has received formal approval by the Board of Education of Frederick County and the Contractor has completed the Change Order work.

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**§ 9.8.3** ~~Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.~~The comprehensive list of items to be completed or corrected ("Contractor's Punch List") prepared by the Contractor shall be submitted to the Owner and the Architect and the Owner shall be notified of inspections and be entitled to have an Owner's representative present at such inspections. All items that are disclosed during inspections not complying with the Contract Documents shall be added to the Contractor's Punch List and a copy of the Amended Punch List shall be submitted to the Owner and the Contractor. Any Certificate of Substantial Completion shall then be submitted making reference to the Punch List item, as either being completed to the Architect's satisfaction or shall fix a time within which the Contractor shall complete any remaining items. In the event the Contractor's Punch List is not completed by the date set forth in the Certificate of Substantial Completion, Owner has the option of deducting from balances due the Contractor an amount sufficient to compensate Owner for the cost of completing the Punch List. The amount to be deducted shall be determined in the sole discretion of Owner. Alternatively, Owner at its sole discretion may proceed to engage another Contractor to complete the Punch List Work with the cost thereof to include Owner's administrative costs, which costs shall be calculated in the sole discretion of the Owner, to be deducted from the amount retained and if the amount retained is insufficient, the Contractor is responsible to reimburse Owner the full amount of the uncovered cost. To the extent that multiple inspections may be required to determine whether the Work, or a designated portion thereof has attained Substantial Completion, the Owner shall be entitled to deduct from the Contract Sum any amounts which it must pay to the Architect for additional services for such additional inspections.

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...

**§ 9.8.4** When the Work or designated portion thereof ~~is~~ including Record Documents and Maintenance Manuals are substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial ~~Completion;~~ Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work provided the Contractor has completed all other contractual requirement stipulated to begin the warranty periord or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

...

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

...

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such ~~inspection. When~~ inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

...

**§ 9.10.2** Neither retainage payments nor final payment ~~nor any remaining retained percentage~~ shall become due until all documents required by the Contract Documents and Article 5 of AIA 101 Standard Form of Agreement Between Owner and Contractor including all (a) Maintenance Manuals, (b) Record Documents, (c) Instruction and Demonstrations have been provided and the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect,~~ effect and will not be cancelled or allowed to expire until at least 30 days, prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents,

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(4) consent of surety, if any, to final ~~payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner,~~ payment and, (5) other data establishing payment or satisfaction of ~~obligations, such as receipts and~~ obligations such as receipts, releases and waivers of liens, claims, security ~~interests,~~ interests or encumbrances arising out ~~of~~ the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such ~~lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance~~ lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging ~~the lien, claim, security interest, or encumbrance,~~ such lien, including all costs and reasonable ~~attorneys'~~ attorney fees.

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**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice and exercise utmost care and carry on such activities under supervision of properly qualified personnel.

...

**§ 10.2.4.1** If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner and shall defend, indemnify, and hold Owner and Architect harmless from and against all claims, liabilities, suits, losses and damages arising out of or relating to such materials.

...

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, ~~the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such~~ costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If Work is not in accordance with the Contract Documents, ~~the costs of uncovering the Work,~~ such costs and the cost of ~~correction, shall be at the Contractor's expense.~~correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs. The cost to repair nonconforming work shall be considered a latent defect and the contractor responsible for the work or as appropriate the damage to the work shall be responsible for the cost to make repairs to said work and return the uncovered work to the condition before the work was uncovered.

...

~~The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.~~ The Contractor and its surety shall have the right to remedy any defects in the Work on materials which shall appear within a period of two (2) year from the date of Substantial Completion. Upon written notice from the Owner, the Contractor and surety shall promptly provide said remedy after notice from the

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Owner. If said remedy is not promptly provided, the Owner shall have the right to correct said defects and charge the Contractor and its surety for the same.

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**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within ~~one year~~ two-years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of ~~any~~ an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do ~~so,~~ so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the ~~one-year~~ two-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within ~~a reasonable time during that period~~ five working days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section ~~2.5.~~2.4. If the Contractor does not proceed with correction of such nonconforming Work within five working days fixed by written notice from the Architect the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within three days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Owner's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

...

**§ 12.2.2.2** The ~~one-year~~ two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

...

**§ 12.2.2.3** The ~~one-year~~ two-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

...

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the ~~one-year~~ two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

...

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

...

**§ 13.2.2 ~~The Owner may, without consent~~ WRITTEN NOTICE**

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~~of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.~~Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

...

**§ 13.4.7** No tests or inspections or results thereof shall constitute an acceptance of any Work not conforming to the requirements of Contract Documents.

...

~~Payments due and unpaid under the Contract Documents~~ **§ 13.5.1** Interest payments will not be required for late payments under the terms of this Contract.

...

**§ 13.6 TIME LIMITS ON CLAIMS**

...

~~shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~**§ 13.6.1** Commencement of Statutory Limitations Period and Statute of Repose shall be in accordance with the laws of the State of Maryland.

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**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ 120 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the ~~Work,~~ Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

...

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

...

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment ~~for Work executed,~~ as ~~well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~

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~~**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~set forth in the provisions of this Agreement regarding termination by the Owner for convenience.

...

**.1** ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;

...

**.2** fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

...

**.3** ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

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**§ 14.2.5** In the event that is adjusted that the Owner's termination for cause is not justified, then the Termination shall be deemed to be a termination by the Owner for convenience and the Contractor shall be entitled to compensation as only set forth in the provisions of this Agreement regarding termination by Owner for Convenience.

...

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. At its option the Owner may terminate this Contract in whole or from time to time in part at any time by written notice thereof to the Contractor. Upon any such termination, Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, Owner shall pay Contractor in accordance with 14.4.2 below. The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not confirming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice direct otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no further orders or subcontracts for materials, equipment, services, or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plans and equipment on the Site or in transit thereto. Upon such termination, the obligations of the Contractor shall continue as to portions of the Work already performed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

...

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

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**§ 14.4.3** ~~In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~Upon Termination for Convenience, the provisions of the Contract, which by their nature, survive any final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not conforming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice directs otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no future orders or Subcontracts for materials, equipment, services or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or Subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plant and equipment on the site or in transit thereto. Upon termination, Contractor shall be entitled to be paid the full cost of all Work properly done by Contractor on account of the portion of Work Performed. If at the date of such termination, Contractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Work, and if Contractor delivers such goods to the Site or to such other place as the Owner shall reasonably direct, then Contractor shall be paid for such goods or materials. No other payment shall be made by reason of damages or otherwise, including but not limited to loss of anticipated profits, overhead, or any other claim or amount whatsoever.

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**§ ~~15.1.3.1~~** ~~Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party~~ **15.1.3.** Claims by the Contractor must be made by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by ~~either party under this Section 15.1.3.1 shall be initiated~~ Contractor must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Contractor claim(s) shall not be valid unless made in strict accordance with this subparagraph.

...

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. -The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

...

If the Contractor wishes to make a Claim for an increase in the Contract Sum, ~~notice as provided in Section 15.1.3~~ written notice as provided herein shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. A Claim must be processed as defined herein, Article 15 and comply with all requirements of Article 7.

...

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, ~~notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.~~written notice as provided herein shall be given. No claim for delay damages of any kind or nature shall be valid and no such damages shall be paid by the Owner except upon Owner's written consent which consent is in the sole and absolute discretion of the Owner. No written consent by Owner to damages for one period of delay, entitle Contractor to

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damages for any other period of delay. A Claim for additional time must be for adverse weather conditions and the actual conditions must exceed the cumulative monthly adverse weather day totals indicated in 15.1.5.2.

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**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, the time must exceed the time as defined in the schedule below, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, exceeded the schedule below and could not have been reasonably ~~anticipated,~~ anticipated and had an adverse effect on the scheduled construction. The State of Maryland, Department of General Services, Special Provisions Section of Hagerstown, Maryland will be used in the calculation of the monthly anticipated adverse weather delays. The monthly-anticipated adverse weather delays are as follows, in workdays. The Contractor's schedule must reflect these anticipated adverse weather delay days in weather dependent activities:

...

| Jan | Feb | March | April | May | June | July | Aug | Sept | Oct | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 8 | 7 | 7 | 8 | 8 | 7 | 5 | 6 | 4 | 6 | 5 | 5 |

...

In any event, Contractor's Claim(s) for delay in the performance of the Work due to adverse weather conditions is strictly limited to a Claim for additional for additional time only. In no event shall the Contractor be entitled to monetary damages or any other compensation as a result of a delay in the performance of the Work due to adverse weather conditions.

...

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any ~~Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered.~~ Claim . Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be ~~final and binding on the parties but~~ subject to mediation and, if the parties fail to resolve their dispute through ~~mediation, to binding dispute resolution.~~mediation the claim shall be resolved by litigation.

...

**§ 15.2.6.1** Either party may, within 30 days from the date ~~of receipt~~ of an initial decision, demand in writing that the other party file for ~~mediation.~~ mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within ~~30 days after receipt thereof,~~ the time required, then both parties waive their rights to mediate or pursue ~~binding dispute resolution proceedings~~ litigation with respect to the initial decision.

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...

**§ 15.4.1** ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~All disputes and other matters in question between the parties to this Agreement which cannot be resolved by the parties in accordance with the terms of this Agreement shall be referred to legal counsel and resolved in the Circuit Court for Frederick County, Maryland and all parties hereto agree to submit themselves to

...

**~~§ 15.4.1.1~~** ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~the jurisdiction of that Court. During any legal proceedings or other dispute resolution proceedings

...

**~~§ 15.4.2~~** ~~The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~which may be

...

**~~§ 15.4.3~~** ~~The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~agreed to between the parties, Owner and Contractor shall

...

**~~§ 15.4.4 Consolidation or Joinder~~**

...

**~~§ 15.4.4.1~~** ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~comply with sub-paragraph 4.74.

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**~~§ 15.4.4.2~~** ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not~~

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~~constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

...

~~**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:06:18 ET on 02/12/2020 under Order No. 4323301581 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

*(Signed)*

_____

*(Title)*

_____

*(Dated)*

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# MD COMAR 21.07.02.10 Performance and Payment Bond

Mandatory provision for all construction contracts exceeding $100,000:

A. Performance Bond. The required performance bond shall be in the form specified as follows:

## PERFORMANCE BOND

_____ _____

Principal Business Address of Principal

_____

Surety a corporation of the State of _____and authorized to do business in the State of Maryland.

Bond Number _____ Penal Sum of Bond _____

(expressed in figures)

_____ Date Bond Executed _____ _____, 20___

(expressed in words)

The Board of Education of Frederick County 191 South East Street, Frederick MD. 21701-5918

Obligee Business Address of Obligee

Contract Description: Bid Number _____ Contract Date _____, 20___ Project Name: _____

_____

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with The Board of Education of Frederick County, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by The Board of Education of Frederick County, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1 Principal shall well and truly perform the Contract; and
2 Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by The Board of Education of Frederick County to be in default under the Contract, the Surety may, within 15 days after notice of default from The Board of Education of Frederick County, notify The Board of Education of Frederick County of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then The Board of Education of Frederick County thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or

# MD COMAR 21.07.02.10 Performance and Payment Bond

## PERFORMANCE BOND CONTINUED

to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of:
Witness

_____ as to

Individual Principal

_____ (SEAL)

---

In Presence of:
Witness

_____

_____ as to

_____ as to

_____ as to

Co-Partnership Principal

_____ (SEAL)
(Name of Co-Partnership)

By: _____(SEAL)

_____(SEAL)

_____(SEAL)

---

_____
(Name of Corporation)

_____
Attest:

_____
Corporate Principal

_____ as to
(Corporate Secretary)

By: _____
(President)

AFFIX CORPORATE SEAL

---

# MD COMAR 21.07.02.10 Performance and Payment Bond

PERFORMANCE BOND CONTINUED

_____
(Individual or Corporate Surety)

Attest: (SEAL) By: _____ (SEAL)

_____ Title _____
(Signature)

_____ _____
(Bonding Agent's Name) (Name of Surety)

_____ _____
(Agent's Address) (Business Address of Surety)

Approved as to legal form and sufficiency this _____ day of _____, 20__ _____
(Asst. Attorney General)

B. Payments Bond. The required Payments bond shall be in the form specified as follows:

## PAYMENT BOND

_____ _____
(Principal) (Business Address of Principal)

Surety_____ a corporation of the State of _____ and authorized to do business in the State of Maryland
**OR**
an individual surety qualified in accordance with State Finance and Procurement Article, § 13-207 or 17-104, Annotated Code of Maryland.

Bond Number _____ Penal Sum of Bond _____
(expressed in figures)

_____ Date Bond Executed _____, 20____
(expressed in words)

The Board of Education of Frederick County 191 South East Street, Frederick MD 21701
(Obligee) (Business Address of Obligee)

Contract Description: Bid Number #_____ Contract Date _____, 20___ Project Name: _____

BY THESE PRESENTS, That we, the Principal named above and Surety named above, being authorized to do business in Maryland, and having business address as shown above, are held and firmly bound unto the Obligee named above, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of this Payment Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

# MD COMAR 21.07.02.10 Performance and Payment Bond

## PAYMENT BOND CONTINUED

WHEREAS, Principal has entered into or will enter into a contract with The Board of Education of Frederick County, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the "Contract".

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials furnished, supplied and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined to be any and all of those persons supplying labor and materials (including lessors of the equipment to the extent of the fair market value thereof) to the Principal or its subcontractors and subcontractors in the prosecution of the work provided for in the Contract, entitled to the protection provided by Section 17-101et. seq., State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended.

2. The above named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant as herein defined, who has not been in full may, pursuant to and when in compliance with the provisions of the aforesaid Section 9-113, sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Payment Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Payment Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the date shown above and in the presence of:

# MD COMAR 21.07.02.10 Performance and Payment Bond

## PAYMENT BOND CONTINUED

Witness _____ (Individual Principal) _____

_____ as to _____ (SEAL)

Witness _____ (Name of Co-Partnership) _____

_____ (SEAL)
(Co-Partnership Principal)

_____ as to By: _____ (SEAL)

_____ as to _____ (SEAL)

_____ as to _____ (SEAL)

_____
(Corporate Principal)

Attest: _____ (Name of Corporation) _____

_____ as to By: _____ AFFIX CORPORATE SEAL
(Corporate Secretary) (President)

_____
(Individual or Corporate Surety)

Attest: (SEAL) By: _____ (SEAL)

_____ Title _____
Signature

Bonding Agent's Name _____ (Business Address of Surety) _____

Agent's Address _____ (Business Address of Surety) _____

Approved as to legal form and sufficiency this _____ day of _____, 20__ _____
(Asst. Attorney General)

# Scope of Services

Frederick County Public Schools request proposals for purchase of a New Educational occupancy Modular Classroom building. All of the following conditions must be met for the most stringent condition required in Frederick County Maryland. Occupant load: 25 students and two adults, one teacher, one teacher aid 27 total occupant load per classroom. Sprinkler piping, back flow, and all approvals by modular building contractor. Electrical services, water and sewer connections at site by FCPS unit price contractor.

This building shall be manufactured from 13'8" x 66 'modular sections.

The building shall contain 6 classrooms and a wet floor section, see plans.

The building shall be approved and constructed to include the Maryland commercial seals.

The design and construction shall accommodate 170 MPH ultimate wind speed

Educational occupancy floor loads:

Live load 100lb psf provide 1,000 lb classroom & 2,000 lb corridor concentrated load over 30" x 30" area

Snow load as required by Code for the most stringent condition in Frederick County Maryland

Roof load as required by Code for the most stringent condition in Frederick County Maryland

The modular shall be "Outrigger Style" construction in compliance with the Maryland commercial building requirements

I beam, main beams, crossmembers and all other structural compliant shall be in compliance with the Maryland Commercial building requirements.

Hitches, axles and running gear shall be detachable, tires and wheels shall be new.

The modular building shall be constructed with a 30-gauge galvanized bottom board

Framing:

Floor Joist – Manufacturing Option A or B may be used for design and with State of Maryland approval construction of the Modular Building: both floor options must accommodate not less than R-30 insulation. The Owner may require the building constructed with the floor joist option providing the finish floor closer to the site grade when the higher finish floor would have a detrimental impact accommodating ADA ramp to grade.

Option A – when structural steel framing is provided with not over 24" on center spacing, 2" x 3" wooden sleepers may be attached to each structural steel framing member providing wooden support for the double layered ¾" floor sheeting, floor sheeting joints must be staggered.

Option B - when standard floor joists are utilized 2" x 8" floor joist are required at 16" on center with double rim joist for support of the double layered ¾" sheeting, floor sheeting joints must be staggered.

Wall Framing – exterior walls must be constructed with 2" x 6" framing materials to support R-19 insulation. Wall height shall accommodate 8' clear finish floor to finish ceiling, 6" clear required above finish ceiling for T-Grid lay in light fixtures. All wall openings shall have doubled 2" x ## headers extending not less than 1½" beyond rough opening and supported by a bearing stud at the top of the rough opening. Cripple studs sham be installed above the headers. Interior walls shall be insulated for sound control.

Provide and install a “Plenum Chase Wall” at each HVAC unit, this chase wall shall also support the installation of electrical distributions equipment for the specific classroom and the HVAC equipment servicing the classroom.

Roof framing / Ridge Beam / Truss systems shall be constructed ad designed by the modular building manufacturer providing mot less than 8’ 6” clear in classrooms and 9’ clear in corridors for multi room buildings including wet modular floors sections. Roof Framing /ridge beam / truss systems shall accommodate not less than R-38 insulations systems.

The manufacturers “on site assembly drawings” shall clearly identify the shipping wall configuration locations and attachment method, these details shall be used by the Owner when the building is to be relocated. Building installation requirements shall be shipped with the modular building, floor and ceiling connections between modular building sections shall clearly define the installation method and minimum spacing of fasteners and the fastener sizes, NOTE: this building is designed and constructed with a hard bottom board; floor / mate line connections between modular building sections shall not require removal or penetration of the hard bottom board. When strapping is required on the roof assembles, the minimum strapping spacing and fastener requirements shall be clearly identified.

Roof system:

45 mil Black EPDM with 20-year full system warranty. Roof Products shall be installed per the manufacturer recommendations. Manufacturer shall be scheduled for necessary inspections to issue the warranty.

Exterior:

The exterior of the modular building shall be 100% covered with 7/16 OSB, House wrap with 0.19 aluminum siding, Owner to choose from manufacturers’ standard colors. Trim color shall also be from manufacturers standard colors.

Windows:

Double insulated fixed e-glass windows 3’ x 4’6” see plan for location.

All windows shall have vinyl blinds at each window, Blinds shall be fit to the window openings.

Exterior doors:

Double 3’0 x 6’8” entry doors shall be provided at ends of modular building, Von Duprin Keyed removable Mullions KR54 with Best 7 pin removable core mortise cylinder 1E74C4-RP-626 shall be provided and installed at entry doors (von Duprin KR4954X154 with stabilizers. The doors shall have 4” x 24” borrowed light installed in each door, borrowed lights shall be installed as shown on the detail included with the bid. Each exterior door shall have LCN 4040XP parallel arm mounter closure and Roton Hager hinges 78-HD series. The left door hardware for each pair of entry doors: Panic Hardware LD-99-EO-US26D-3’-299-PBT-US32D Von Duprin Panic Bar. The right door hardware for each pair of entry doors: Panic Hardware QELA-99-EO-US26D-3’-299-PBT-US32D Von Duprin Electric Panic Bar with Pull Plate Von Duprin pull Handel VR910NL with rim cylinder, Mortise Cylinder Stanley Securities 12E72S2-RP-626. The right entry door requires Von Duprin electric power transfer hinge, EPT-10-628 Power Transfer typical.

Interior doors: All 20-minute rated assemblies unless more stringent is required by the modular building design.

Classroom Entry & Classroom Closet doors, All Lock sets for classrooms shall be store room function:

Stanley Security Lock Set 9K37D15DS 3626 with Stanley Securities BEST 7 pin interchangeable core, Spring Loaded Hinges by Don-jo SH74545 and wall stop by Hager 326W.

Gang Toilet doors:

Push / Pull by Ives 8200 4" X 16", Spring Loaded hinges by Don-Jo SH74545

Staff toilet:

Lock set by Stanley Securities 9K37D15SD3626, with Best 7 pin interchangeable core, spring loaded hinges by Don-Jo SH7545 and Wall stop by Hager 362W Indicator Loc (VAC/ OCC) by Falcon D271-626

Storage / copy / office rooms:

Lock set by Stanley Securities 9K37D15SD3626, with Best 7 pin interchangeable core, spring loaded hinges by Don-Jo SH7545 and Wall stop by Hager 362W

Corridor: the corridor shall be 1 hour rated assembly, Fire caulking shall be provided and installed at the manufacturing facility and continue as the building is assemble and set up on site. The manufacturing facility shall provide the same fire caulking for field assembly fire caulking insuring continuity of the fire rated corridor and fire caulking systems. 5/8 type X fire rated gypsum as required.

Attic ventilation: Provide and install components necessary for code compliance.

Interior finishes:

Walls shall be constructed of1/2" VCG, Vinyl covered gypsum, National Gypsum Looma Beige. Batons shall have matching vinyl covering.

Flooring finishes:

VCT, Armstrong full depth standard colors, Owner to choose color from standard colors.

4" cove base from standard colors, all batten strips to be trimmed permitting continuous cove base.

Finish Ceiling:

¾" T-grid suspended ceiling grid with 2' x 2' standard white tiles installed providing 8 feet clear finish floor to finish ceiling.

General lighting:

2' x 4' standard lay in LED ceiling lighting fixtures, switched per the floor plan:

Classrooms see light switch plan accommodating area lighting and dimming capabilities with occupancy sensor.

Other rooms LED lighting switched as shown on floor plan.

Corridors three way switching at each entry door, No occupancy sensors for corridor lighting.

Emergency light/exit sign: Combo dual head Lithonia ECR LED HO M6 with battery back-up.

Exterior emergency light remote heads as required Lithonia ELA LED T WP Remote head with battery back-up.

Teacher closets lighting: White recessed can light w/eye ball trim.

Exterior porch light: White LED w/ photo cell.

Receptacles / Switches / Covers all white (***Child Proof Receptacles***).

GFI Receptacles:

GFI receptacles shall be located in areas required by code inside the building.

GFI receptacles shall be located by the lower left corner of each HVAC unit outside the building. Exterior GFI receptacles shall be located in a weather proof box for HVAC equipment maintenance access.

Panel type: Standard 150 AMP electrical distribution (one per classroom), 125AMP electrical distribution (toilet Floor section).

1 ½" Conduit, 6"x 6" x 4" services boxes and individual devise boxes with pull string shall be provided as indicated for use by the Owner.

HVAC Equipment:
Occupant load: 25 students and two adults, one teacher, one teacher aid 27 total occupant load per classroom.
Bard units, 11EER with Dehumidification and Energy Recovery unit built in.
Units shall be sized to the portable designed for with minimum back up resistance heat possible.
The units shall be equipped with Temperature and Humidity controller.
Thermostat shall be Honeywell Wi-Fi thermostats, CS2000 or current Honeywell Wi-Fi programmable model thermostat.
The units shall be equipped with Merv 11 filters.
Individual classroom units shall be powered from the electrical distribution panel with in the same classroom serviced by the HVAC unit.
Fire dampers shall be installed as necessary, the classroom HVAC systems shall be limited to one fire damper unless the necessary design requires 2. Where two or more dampers are required for fire protection in the areas being serviced, the owner shall be notified identifying duct work requiring more than one fire damper.
Supply and return duct as designed by building manufacturer, the design shall include sound deadening / sound attenuation providing a classroom space that the HVAC sounds are within tolerance recommendations established by the state of Maryland.
2' x 2' supply grills shall be installed in the 2' x 2' ceiling grid system, supply grills shall have a fixed linear blade diffuser.
Return are grills shall also be supported by the 2' x 2' ceiling grid system.

Plumbing:
High-Low ADA compliant water coolers shall be provided in the wet floor section.
All toilet fixtures shall be elongated equipped with flush valves,
Toilet rooms, two ADA compliant gang toilet rooms shall be provided, One ADA compliant gang toilet shall have urinals with modesty partition(s).
One staff ADA compliant toilet room shall be provided.
Water closet modesty partitions shall be provided with ADA compliant grab bars
Hand wash sinks shall be provided as required by code with stainless steel framed glass mirrors.
Handicap sink protection – sock for – P-trap & insulated Hot water piping
Floor mounted mop sink in utility / IT closet
Venting through the roof shall be installed at the factory of by the modular set up contractor to insure roof warranty remains in effect. Modular contractor shall provide roof inspections for the roof manufacturer as required to maintain the warranty.

Sprinkler systems as required by Modular Building requirements, Building Code, NFPA and Frederick County Maryland.

Aluminum Ramps and Decks: assume one ADA compliant deck with not less than 30 feet of ADA ramp to grade low end of building, assume not less than one deck at exit doors with one switch back deck, a 30-foot section of ramp and a separate 15-foot section of ramp for the high end of the building. All decks and ramps shall be equipped with fall protection and hand rails.

Foundation systems: The Modular contractor shall provide in his bid a Maryland Sealed foundation plan for ABS shallow foundations utilizing not less than 12" of clean stone below finish grade, pier size and locations shall be defined as well as screw in tiedown auger system.
Framing and skirting: the portable shall be framed from finish grade to the bottom of the portable with materials to support the skirting and wind load imposed on the skirting. Skirting material shall match the exterior of the portable classroom.

Rain gutter systems: the modular classroom shall have field installed rain gutters installed after set up. The gutter system shall have down spouts wit 90-degree bend to finish grade with splash blocks.

## 6 Classroom modular w gang toilets installed at Oakdale Elementary

### Site Specific Scope of Services

Water Connection Piping Services at Oakdale Elementary

Provide materials and labor to connect new 1 ¼" water service from the main buildings 2 ½" water piping near rooms 327 & 328. Provide and install a 1 ¼" valve above the ceiling in the main school, continue the 1 ¼" water piping above the ceiling through the exterior building wall, down the exterior wall below grade turning up under the Modular Building and connecting in the modular building. All exterior piping shall be installed with heat trace and insulation to prevent freezing. The water piping shall be installed through the exterior wall where sufficient room exist for the electrical contractor to install the electrical services connections to the Modular (4" conduit). Both the plumbing and electrical services to the modular classroom are to be installed underground at the location where the sidewalk is shown to be installed. The plumber shall provide and install a metal cover over the insulated water supply lines. The metal cover shall be made from a standard color available similar to the brick color of the school.

Alternate water connection established a new 4" tap to the existing *" water line under the roadway in front of the school. The water line shall be extended to the Now Modular classroom location and shall be installed outside of the grass create paver area.

Sewer Connection Piping Services

The plumbing contractor shall provide and install manifold below the portable, connect the venting and install through the modular roof, a clean-out with in five feet of the building. The sewer utility connection shall continue connection to the county sanitary sewer system. The county sewer piping and manhole are shown on the Oakdale site drawing. All piping and connections shall be made in accordance with Frederick County Plumbing code and or the authority having jurisdiction over the Frederick County Sanitary Sewer piping and manholes.

Electrical Services

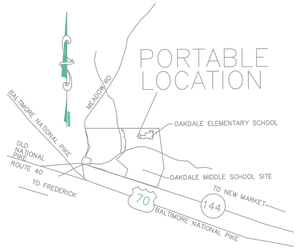
Provide and install electrical connections to the 6-classroom portable at Oakdale Elementary. Provide and install wiring connected to an existing breaker in the main school switch gear to the 225 KVA transformer to be installed near the modular building. An empty 4" conduit is installed in the building between the main electrical switch gear and the pull box installed in equipment room 307A. This scope

of services shall provide and install conduit from the existing pull box to the structure above continuing overhead through the building exterior wall, the conduit shall turn down the exterior wall continuing underground to the fused disconnect installed near the 225 KVA transformer. The service is to be sized as necessary to accommodate current and future electrical power available from a 225 KVA 3 phase transformer to be installed as shown. The transformer shall have a fused disconnect near the transformer, a fused disconnect between the transformer and the 7 individual disconnects that are to be mounted on the modular classroom. The 7 individual disconnects are to be fused to accommodate the load requirements of individual distribution panels installed in each of the classrooms. Provide and install code compliant wiring between the 7 fused disconnects you have provided and installed on the exterior of the modular building and each of the distribution panels in the modular building.

The electrical services shall provide low voltage materials, labor and installation. The low voltage service includes fire alarm connections from the school to the modular building including Pull stations at the exterior doors, and strobes in each room in the portable as well as the corridor system. The fire alarm required both notification and annunciation circuits. These circuits shall start at the fire alarm panel in the building continuing to the utility room in the modular. The circuits shall be installed in PVC conduit through the main building exterior wall, continuing underground with the water and line voltage wiring, turning up and through the floor of the portable into the utility room in the modular building. The fire alarm wiring shall then be installed above the ceiling to the pull stations and each strobe. In the event a booster panel is required, FCPS will provide the necessary

booster panel. The low voltage wiring includes intercom connectivity with the main building intercom system. A new talkback speaker shall be provided and installed in each classroom, office area and the corridors. Each individually wired classroom speaker shall be equipped with a volume control for use by the classroom instructor. The Portable Classroom shall be connected with 6 strands of fiber from the main school MDF/IDF. Each classroom shall have 5 data drops connected with copper from the classroom DATA box to face plates in each classroom. The data drops shall be installed such that the data wiring will remain intact in the event the portable is moved to an alternate site, wiring shall not cross mate lines. Another drop shall be installed in each room for the wireless device that is to be installed by FCPS staff.

# Oakdale Elementary School
# PROPOSED PORTABLE PLAN




VICINITY MAP
TAX MAP #78, PARCEL #736
SCALE: 1"=2,000'±
TAX ID: 09-313419




## SITE NOTES

1. THIS SITE PLAN FOR OAKDALE ELEMENTARY SCHOOL IS A REVISION TO THE PREVIOUSLY APPROVED PLAN. THIS SITE PLAN IS ONLY BEING REVIEWED FOR PORTABLES.
2. THE SITE IS IN IJAMSVILLE MARYLAND.
3. SITE IS THE OAKDALE MIDDLE AND ELEMENTARY SCHOOL SITE. THE TAX ID IS 09-313419.
4. THIS PLAN MAY NOT INDICATE ALL ENCUMBRANCES ON THE PROPERTY.
5. A BOUNDARY SURVEY WAS NOT PERFORMED FOR THE PORTABLE REVIEW & APPROVAL PLAN.
6. UTILITIES SHOWN ARE BASED ON DRAWINGS ARE FROM THE ORIGINAL CONSTRUCTION INCLUDING TOPOGRAPHY. LOCATIONS ARE APPROXIMATE AND TO BE VERIFIED BEFORE COMMENCEMENT OF CONSTRUCTION.
7. THE PROPOSED PORTABLE SITE IS OUTSIDE THE BOUNDARY OF THE 100-YEAR FLOODPLAIN AS DEPICTED ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEMA, FLOOD INSURANCE RATE MAP.
8. HORIZONTAL DATUM IS BASED ON PLAT CALLED "MARYLAND STATE PLANE". VERTICAL DATUM IS BASED ON MARYLAND STATE PLANE'.
9. WATER PRESSURE ZONE = 3. MAXIMUM GROUND ELEVATION IS 360.00 AND MINIMUM GROUND ELEVATION IS 326.00.
10. ALL WORK IS BY OPEN CUT TRENCHING.
11. THERE ARE NO EXISTING OR PROPOSED WELLS WITHIN 50' OF THIS PROPOSED SEWER.
12. TOTAL IMPACTED FORESTED AREA 0.00 AC.
13. ALL ON-SITE TRAFFIC CONTROL (SIGNAL, MARKING, ETC.) SHALL MEET LATEST EDITION OF MUTCD.
14. THE TOTAL SQUARE FOOTAGE OF THE ELEMENTARY SCHOOL BUILDING IS 89,566.
15. THE FOOT PRINT OF THE 2 STORY BUILDING IS 67,318 SQUARE FEET.
16. NO NEW SITE SIGN IS PROPOSED.
17. NO NEW LIGHTING IS PROPOSED.
18. ADDITION OF ONE 24x36 PORTABLES WILL INCREASE IMPERVIOUS BY 6,238 S.F.
19. ANY LANDSCAPING REMOVED (IE. TREES OR SHRUB) SHALL BE REPLACED IN KIND (MIN 2" CALIPER TREE OR 3 GALLON SHRUB) ON SITE IN A LOCATION DETERMINED BY THE OWNER.

TOTAL SITE AREA:.....37 +/- ACRES

PROPOSED USE:.....PUBLIC ELEMENTARY SCHOOL

PARKING REQUIRED:

EXISTING ELEMENTARY SCHOOL: 2 PER CLASSROOM.....2x48=96
CAFETORIUM SEATS (1 PER 8 SEATS).....570/8=71.25 (72)

TOTAL REQUIRED w/out portable:.....168

(1) Proposed Portable: 2 PER CLASSROOM.....2x6=12

TOTAL PARKING REQUIRED:.....180

TOTAL PARKING PROVIDED:.....197

REMAINING EXCESS PARKING AFTER PORTABLE .....17

LOADING PROVIDED:
Estimated 1 Tractor-Trailer DELIVERY WEEK. OTHER DELIVERIES BY STEP VANS.

PROPOSED BUILDING SQ. FOOTAGE:
(1) PORTABLE (6) CLASSROOMS 5,322 SQ. Ft. .....=5,322 SQ. FT.

EXISTING BUILDING SQ. FOOTAGE:
ELEMENTARY SCHOOL.....68,752 sq. Ft.
(0) EXISTING PORTABLES X 000 sq Ft PER .....000 sq. Ft.

| | |
|---|---|
| FILE #: | SP99-42 |
| A/P #: | SP258777 |
| DATE #: | 2/19/2020 |
| PB: | PG: |

General Notes

FCPS Frederick County Public Schools
Reach. Challenge. Prepare.

SITE PLAN - TYPE III
Bid# 20C10 Multi-Classroom Portable Unit
for Oakdale Elementary School

| No. | Revision/Issue | Date |
|---|---|---|
| 2 | REVIEW COMMENTS | 2/26 |
| 1 | REVIEW COMMENTS | 2/19 |

Firm Name and Address
FREDERICK COUNTY PUBLIC SCHOOLS
OPERATIONS DIVISION
Capital Programs
FREDERICK, MARYLAND 21701-5918
PHONE 301-644-5176

Project Name and Address
Oakdale Elem. Building Portable Site
5830 Oakdale School Road
Nashville, MARYLAND 21754

Project: Proposed Portable
Date: 01/24/2020
Scale: 1" = 60'
Sheet: 1 of 4

APPROVAL STAMP

| | |
|---|---|
| FILE #: | SP99-42 |
| A/P #: | SP258777 |
| DATE #: | 2/19/2020 |
| PB: | PG: |

General Notes

FCPS
Frederick County Public Schools
Reach. Challenge. Prepare.

# SITE PLAN - TYPE III

## Multi-Classroom Portable Unit

## for Oakdale Elementary School

## Bid# 20C10

| No. | Revision/Issue | Date |
|---|---|---|
| 2 | REVIEW COMMENTS | 2/26 |
| 1 | REVIEW COMMENTS | 2/19 |


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PHONE 301-644-5176


Project Name and Address

Oakdale Elem. Building Portable Site

5830 Oakdale School Road

Ijamsville, MARYLAND 21754

| Project | Sheet |
|---|---|
| Proposed Portable | 2 of 4 |
| Date: 3/2/2020 | |
| Scale: 1" = 30' | |

CE NO. 2

Deck & Ramp
Aluminum

162'

P/L

240'

454

97'

HVAC UNITS to be Heat Pumps with EVR and DEHUM, Thermostats shall be Honeywell Wi-Fi 2000 Pro.

Classroom 5
Classroom 6
Classroom 3
Classroom 4
Classroom 1
Classroom 2

HEATPUMP

Office / Copy Room
Boys
Utility&IT
Staff
Girls

Deck & Ramp
Aluminum

4'

WATER, SPRINKLER &
ELECTRICAL SERVICES
Install under sidewalk

633.5'

6"RD

2

Provide
to existi
install 1
1 1/4" p
undergro
Provide &
sheet me
exterior
to exteri

General Notes

FCPS
Frederick County Public Schools
Reach. Challenge. Prepare.

SITE PLAN – TYPE III

Bid# 20C10 Multi-Classroom Portable Unit
for Oakdale Elementary School

| No. | Revision/Issue | Date |
|---|---|---|
| | | |
| | | |

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Ijamsville, MARYLAND 21754

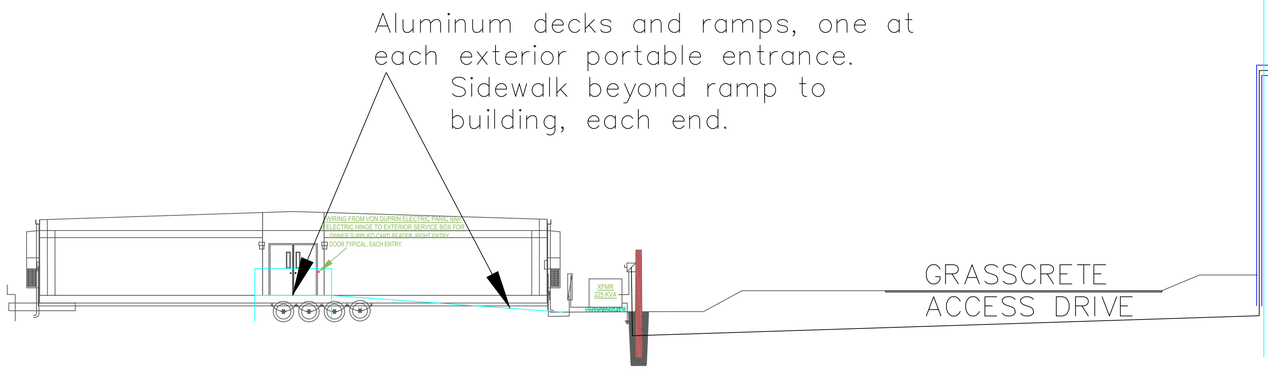
Project
Portable Site Plans

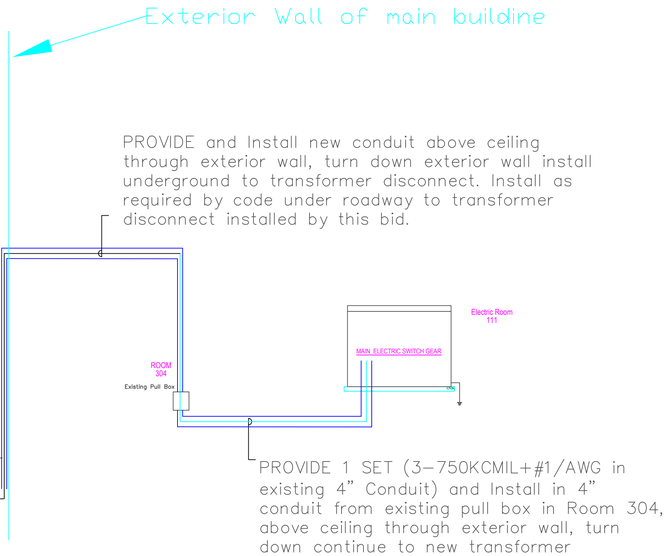
Date
03/2/2020

Scale
3/16" = 1'

Sheet
3 of 4

PROVIDE and Install 1 $\frac{1}{4}$" WATER SUPPLY AND 2" SPRINKLER SUPPLY ABOVE THE CEILING, through exterior wall, turn down exterior wall install underground CONNECT to MODULAR. Install as required by code under GRASSCRETE to MODULAR, PROVIDE AND INSTALL HEAT TRACE ALL EXTERIOR ABOVE GRADE WATER/SPRINKLER LINES, INSULATE AS REQUIRED.

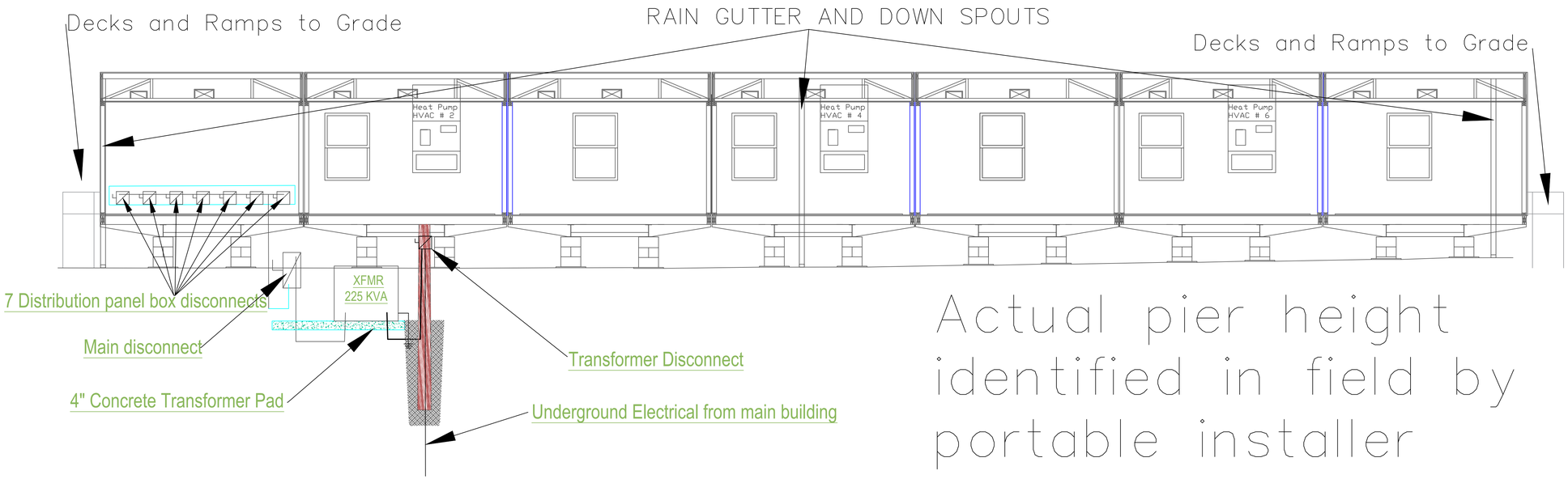



Underground electrical service to be installed.

1 $\frac{1}{4}$" Water line to be installed near electrical service.

Depths per code, the underground Water and Electrical to be work within the foot print of the sidewalk through the GRASSCRETE PAVER ACCESS AREA, DRIVE SEE PLAN.




Actual pier height identified in field by portable installer

NOT TO SCALE

General Notes

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5830 Oakdale School Road
Ijamsville, MARYLAND 21754

Project
Portable Utilities

Sheet
4 of 4

Date
01/27/2020

Scale
NTS